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THE
PENNSYLVANIA
CORPORATION ACT
OF 1874,
AND
SUPPLEMENTARY ACTS,
WITH
NOTES, FORMS AND INDEX,

BY
ANGELO T. FREEDLEY,
OF THE PHILADELPHIA BAR.

SECOND EDITION.

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PREFACE TO SECOND EDITION.

The Corporation Act has, since the former edition, been so enlarged and altered by additional legislation, judicial decisions and Departmental construction that the present edition is practically a new treatise.

The former corporate classification of the general and special statutes has been preserved—care has been taken to ensure accuracy in all citations—and every endeavor made to attempt to correctly represent the law and practice of to-day.

The opinions of the respective Attorneys-General upon applications for charters have been examined and are cited herein under the title O. A. G., together with the date.

The forms have been thoroughly revised and those now printed have received the endorsement of the Corporation Department of the SECRETARY OF THE COMMONWEALTH. Many of them have been drawn by CHARLES M. CLEMENT, Esq., of that Department, to whom my thanks are due for much kind assistance in this regard.

A. T. F.

710 Walnut Street,
PHILADELPHIA, January, 1890.

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THE
PENNSYLVANIA CORPORATION
ACT OF 1874,
AND SUPPLEMENTARY ACTS.

GENERAL PROVISIONS.

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Corporations for Profit.

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- SECTION 46. Mechanical, Mining, Quarrying, Manufacturing, Trading, and other Companies included in § 2, Article XVIII.
- 47. Inclined Plane Railways.
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- 53. List of Charters to be Published.
 - 54. Repeal of Prior Acts.
 - 55. Dissolution of Corporations.
 - 56. Purchasers of Corporate Franchises Constituted Corporation.

1. General Powers.¹—Corporations may be formed under the provisions of this act by the voluntary association of five or more persons, for the purpose, and in the manner mentioned herein, and when so formed, each of them by virtue of its existence as such, shall have the following powers, unless otherwise specially provided :

First. To have succession by its corporate name for the period limited by its charter, and when no period is limited thereby, or by this act, perpetually, subject to the power of the general assembly, under the constitution of this commonwealth.

Second. To maintain and defend judicial proceedings.²

Third. To make and use a common seal³ and alter the same at pleasure.

Fourth. To hold, purchase and transfer such real and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter or by law.⁴

Fifth. To appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them a suitable compensation.

¹ Act 29 April 1874, § 1; P. L. 73.

² The Act of 24 June, 1885 [P. L. 149], provides: SECTION 1. *Be it enacted, etc.,* That in every suit or judicial proceeding, in this commonwealth, to which a corporation is a party, the existence of such incorporation shall be taken to be admitted, unless it is put in issue by the pleadings.

³ The presence of the seal is *prima facie* evidence that the corporation duly authorized the contract: *Berks Turnpike v. Myers*, 6 S. & R. 16; *Parkinson v. The City*, 85 Pa. 313; and that it was affixed by competent authority: *St. John's Church v. Steinmetz*, 18 Pa. 273; *Solomon's Lodge*, 58 Georgia, 547; *Morris v. Keil*, 20 Minn. 531; *Conine v. Railroad Co.*, 3 Houston, 288.

⁴ By Act of 6 June, 1887 [P. L. 350], it is provided: "Where any conveyances of real estate in this commonwealth have been made by any alien, or any foreign corporation, or corporations of another, or of this state, to any citizen of the United States, or to any corporation chartered under the laws of this commonwealth, and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizen or corporation, grantee as

Sixth. To make by-laws not inconsistent with law, for the management of its property, the regulation of its affairs and the transfer of its stock.¹

Seventh. To enter into any obligation necessary to the transaction of its ordinary affairs.

2. **Classes.**²—The purposes for which the said corporations may be formed shall be as follows,³ and shall be divided into two classes :

First Class—Corporations not for Profit.

The first class those for—

I. The support of public worship.⁴

aforesaid, shall hold and may convey such title and estate indefeasibly as to any right of escheat in this commonwealth, by reason of such real estate having been held by an alien or corporation not authorized to hold the same by the laws of this commonwealth.” See *infra*, sect. 35, title Real Estate.

And the Act of 8 June, 1831 [P. L. 69], provides as follows :

§ 1. WHEN COPY OF MINUTES TO BE EVIDENCE.—“Wherever any corporation may have sold, let or mortgaged, or may hereafter sell, let or mortgage, any of its corporate property, real or personal, or its franchises, a copy of the minutes of any meeting of the stockholders or directors of such corporation, authorizing or directing any such sale, letting or mortgaging, proven by oath or affirmation of the secretary, or other proper custodian of such minutes, to be a full and true copy of the minutes of such meeting, so far as relates to any such sale, letting or mortgaging, shall be *prima facie* evidence of the matters therein set forth in any case in which the original minutes, if duly proven, would be evidence in any judicial proceeding, relating to such property or franchises; and such copy, so probated before any officer authorized to take probate or acknowledgment of deeds for the purpose of record in this commonwealth, may be recorded in the office for recording deeds, in the proper county, in like manner, and with like effect, as other instruments of writing, relating to real estate in such county may be recorded.”

§ 2. EVIDENCE AFTER DISSOLUTION.—“Whenever any such corporation, after having sold, let or mortgaged any estate, real or personal, or franchises, may have been, or may hereafter be, dissolved in pursuance of law, such probate may be made by the secretary who kept or recorded such minutes, or by any other ex-officer of such dissolved corporation having the actual custody of said original minutes, and the averment of such facts in the probate shall be *prima facie* evidence thereof.”

§ 3. WHEN INFORMALITY NOT TO INVALIDATE TRANSFERS.—“In case of any duly authorized sale, letting or mortgaging by a corporation, the same shall not be invalidated by any informality in the execution or acknowledgment of any conveyance, mortgage or other instrument by any officer of such corporation for carrying the same into effect: *Provided*, That no defect in substance shall be deemed to be cured hereby.”

¹ See *infra*, p. 24.

² Act 29 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 30.

³ The Constitution of Pennsylvania (Art. XVI, § 6), provides, “No corporation shall engage in any business other than that expressly authorized in its charter.”

⁴ Applications of this nature should be made solely under this statute: *Re St. Luke's Church*, 41 Leg. Int. 74; and the Act of 26 April, 1855, § 7, P. L. 330, vesting the disposition of property of religious associations in the lay members thereof equally applies to such associations incorporated hereunder; *infra*, p. 15, n. 4. The tenets of parties applying for such charters should be explicitly stated: *Re J. Elimar*

II. The support of any benevolent, charitable, educational or missionary undertaking.

III. The support of any literary, medical or scientific undertaking, library association or the promotion of music, painting or other fine arts.¹

IV. The encouragement of agriculture and horticulture.²

V. The maintenance of public or private parks, and of facilities for skating, boating, trotting and other innocent or athletic sports, including clubs for such purposes, and for the preservation of game and fish.

VI. The maintenance of a club for social enjoyments.³

VII. The maintenance of a public or private cemetery.⁴

VIII. The erection of halls for public or private purposes.

IX. The maintenance of a society for beneficial or protective purposes to its members from funds collected therein.⁵

Mira Mitta Congregation, 42 Leg. Int. 286; and where an application for a charter exceeded the letter of the statute in desiring incorporation according to the doctrines of a particular sect, this was held to be immaterial, as the prior Act of 11 October, 1840, § 13 [P. L. 5], as to such corporations, was still in force: *In re Church of the Holy Communion*, 37 Leg. Int. 194.

¹ The Act of 25 June, 1885 [P. L. 177], provides that, whenever in and by the last will and testament of any testator, being a resident of this commonwealth at the time of his death, devises or bequests of real or personal estate, or both, shall be made to trustees for the purpose of founding and maintaining any literary, medical or scientific undertaking, library association, or the promotion of music or other fine arts, to be free to the public, and to be supported wholly from the property so devised or bequeathed, or the income thereof, and it is further by such will ordered or recommended that a corporation be formed to which the devised property and estate shall be conveyed by the said trustees, and upon which shall devolve the carrying into effect of the said testator's will touching such literary, medical or scientific undertaking, library association, or the promotion of music or other fine arts, in all such cases, it shall be lawful to insert in any application for such incorporation, and under the general incorporation act of one thousand eight hundred and seventy-four, a provision or provisions that, for the perpetuating a line of successors in such corporation, whenever any vacancy shall happen in the board of directors by reason of the death, resignation or removal from the proper county of any member thereof, the remaining directors may, by a majority vote of the whole remaining number thereof, elect a director to fill such vacancy. And that, where such will shall further direct that any one or more persons shall by virtue of their office be members of such board of directors, it shall be lawful to embody such direction in the said certificate of incorporation, under the said general incorporation act of one thousand eight hundred and seventy-four, as part of the organic law of such corporation.

² In addition to this provision the Act of 14 June, 1887 [P. L. 383], provides another and complete method of incorporating associations for "the purpose of educating the public by exhibiting artistic, mechanical, agricultural and horticultural products and providing public instruction in the arts and sciences."

³ Associations for political purposes are not embraced within the Act: *Re Union League*, Del. Co. Rep. 21; *Re Alpha Association*, 15 Weekly Notes Cas. 208; *Re Central Democratic Association*, 46 Leg. Int. 380.

⁴ By Act 14 May, 1874 [P. L. 165], cemetery companies not organized for corporate profit, may act as trustees of donations for the improvement of the cemetery.

⁵ Marriage benefit associations are not beneficial associations within the statute: *Re Quaker City Ass'n*, 10 Weekly Notes Cas. 467; *Re Mutual Aid Ass'n*, 38 Leg. Int. 423; *Re Helping Hand Ass'n*, Id.

X. The support of fire engine, hook and ladder, hose or other companies for the control of fire.

XI. For the encouragement and protection of trade and commerce.

XII. For the formation and maintenance of military organizations.

XIII. For the prevention of cruelty to children and aged persons.¹

² Each of said corporations may hold real estate to an amount the clear yearly value or income whereof shall not exceed twenty thousand dollars.³

WHEN PURCHASES OF REAL ESTATE AUTHORIZED.⁴—In all cases of hospitals, schools, charitable, literary and religious institutions of all kinds, prohibited by their respective charters or by law from holding real estate, or limited as to the amount thereof, the said prohibition or limitation shall not be taken to extend to purchases made by corporations such as aforesaid, at sheriffs', masters' or marshals' sales of real estate, on which the party purchasing may hold a mortgage, judgment or ground rent, when such purchases are made to protect their respective interests; and that deeds made to them respectively as such purchasers, by sheriffs, masters or marshals making the sales, shall convey to the said purchasers respectively a good and indefeasible title to any and all real estate so purchased, as if no prohibition or limitation as to the purchase of real estate existed in their respective charters or in the law: *Provided*, That all real estate bought by any corporations such as aforesaid under the provisions of this act, in excess of the quantity they are allowed by law or their respective charters to hold, shall be sold by said corporations either on ground rent or otherwise within ten years from the purchase so made as aforesaid.⁵

¹ Act 25 May, 1887, P. L. 265. For special provisions affecting this class of corporations see this title *infra*, sect. 51.

² Act 29 April, 1874, as amended by Act 17 April, 1876, § 2, P. L. 30.

³ The Act of 22 April, 1889; P. L. 42, provides, "Any literary, religious, charitable or beneficial society, congregation or corporation having capacity to take and hold real and personal estate within this commonwealth, may acquire and hold the same to the extent in the aggregate of the clear yearly value of thirty thousand dollars (\$30,000), and to no greater extent, without an express legislative sanction. Such value shall be ascertained as provided by the act to which this is a supplement" [viz., Act of 26 April, 1855; P. L. 330.] See also Act 6 June, 1887 [P. L. 350] quoted *supra*, p. 7, n. 4; the Constitution of Pennsylvania (Art. XVI, § 6) provides, "No corporation . . . shall take or hold any real estate except such as may be necessary and proper for its legitimate business." See *infra*, section 35, title Real Estate.

⁴ Act 13 May, 1879; P. L. 60.

⁵ Extended by Act of 26 May, 1887; P. L. 274.

Second Class—Corporations for Profit.¹

The second class those for ²—

I. The insurance of the lives of domestic animals.³

II. The insurance of human beings against death, sickness or personal injury.⁴

III. The prevention and punishment of theft or willful injuries to property and insurance against such risks.

IV. The grading, curbing, paving or macadamizing, construction and maintenance of any species of street, road or highway and the furnishing of the materials of labor therefor, or construction and maintenance of any species of road other than a railroad and of bridges in connection therewith.⁵

V. The construction and maintenance of a bridge over streams within this state.⁶

VI. The construction and maintenance of a telegraph line.⁷

VI½. Constructing, maintaining and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal and otherwise for general business, and for police, fire alarm or messenger business, or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.⁸

VII. The establishment and maintenance of a ferry.⁹

VIII. The building of ships, vessels or boats, and carriage of persons and property thereon.¹⁰

IX. The supply of water to the public, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes.¹¹

¹ Act 20 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 30.

² The application must only include one of these classes; if it combine two or more, the application will be rejected; O. A. G., Jan. 24, 1887; Id. April, 1877; Id. May 24, 1877; *In re* Parker Elevator Co., O. A. G., Sept. 8, 1877; O. A. G., March 14, 1878.

³ Repealed by Act 1 May, 1876, § 1, cl. 4 and § 57 [P. L. 56] excepting under § 54 of the said act, associations issuing policies not containing a guaranteed sum of insurance. See Solebury Mutual Ass'n, 3 Pa. C. Ct. Rep. 640.

⁴ Repealed by Act of 1 May, 1876, § 1, cl. 3 and § 57 [P. L. 58] excepting under § 54 of the said act, beneficial associations providing aid to the families of deceased members, and associations issuing policies not containing a guaranteed sum of insurance.

⁵ Act 29 April, 1874, as amended by Act 24 May, 1887; P. L. 186.

⁶ For special provisions as to these companies see *infra*, § 39.

⁷ For special provisions as to these companies see *infra*, § 40.

⁸ Act 1 May, 1876; P. L. 90. For special provisions as to these companies see *infra*, § 40.

⁹ Act 29 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 31. For special provisions as to these companies see *infra*, § 39.

¹⁰ For special provisions as to these companies see *infra*, § 52.

¹¹ Act 29 April, 1874, as amended by Act 16 May, 1889, § 1; P. L. 226. For special provisions as to these companies see *infra*, § 41.

X. The supply of ice to the public.

XI. The manufacture and supply of gas, or the supply of light, heat and power by means of electricity, or the supply of light, heat, or power to the public by any other means.¹

XII. The transaction of a printing and publishing business.

XIII. The establishment and maintenance of an hotel and drove-yard or boarding-house, opera and market-house, livery or boarding stable, or either.²

XIV. The creating, purchasing, holding and selling of patent rights for inventions and designs, and the purchasing of copyrights for books, publications and registered trade-marks, with the right to issue license for the same and receive pay therefor.³

XV. Building and loan associations.⁴

XVI. Associations for the purchase and sale of real estate or for holding, leasing and selling real estate, for maintaining or erecting walls or banks for the protection of low lying lands, and for safe deposit companies.

XVII. The manufacture of iron or steel, or both, or of any other metal, or of any article of commerce from metal or wood, or both.⁵

XVIII.⁶ The carrying on of any mechanical, mining, quarrying or manufacturing⁷ business, including all of the purposes covered by the provisions of the Acts of the General Assembly, entitled "An Act to encourage manufacturing operations in this commonwealth," approved April seventh, one thousand eight hundred and forty-nine,⁸ [and] entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three,⁹ and the several supplements to each of said acts,¹⁰ including the incorporation of grain

¹ Act 29 April, 1874, as amended by Act of 8 May, 1889, § 81; P. L. 136. For special provisions as to these companies see *infra*, § 41.

² A corporation cannot be incorporated for "maintaining a hotel and market-house." *Re Hay and Straw Market Co. of Philadelphia*, G. O. A. 13 January, 1888.

³ Act 29 April, 1874, as amended by Act 16 May, 1889, § 1; P. L. 241.

⁴ Act 29 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 31. For special provisions as to these companies see *infra*, § 44.

⁵ Act 29 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 31. For special provisions as to these companies see *infra*, § 45.

⁶ Act 22 June, 1883, § 1, as amended by Act 21 May, 1889, § 1; P. L. 259.

⁷ A dairy company is within this provision: *Richboro Ass'n v. Ryan*, 42 Legal Int. 268; and so is a company for the manufacture and sale of gas: *Re Dauphin Light and Heat Co.*, O. A. G., March 1, 1886.

⁸ P. L. 563.

⁹ P. L. [1864] p. 1102.

¹⁰ The purposes for which corporations might have been formed under these prior acts and their supplements, other than those for "mechanical, mining, quarrying or manufacturing" purposes, are—

elevators,¹ storage-house and storage-yard companies, and also including companies for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom, the construction of dams in any stream, and the driving and floating of saw logs, lumber and timber on and over any stream, not exceeding twenty miles in length, and the heads of all streams not exceeding twenty miles in length from their source, by the usual methods of driving and floating logs, timber and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats,² and also including the manufacture and brewing of malt liquors, but excluding the distilling and manufacture of spirituous liquors.

Companies may be organized under this act, having the right to transport, store, insure and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices and such other machinery, devices or arrangements as may be necessary to fully carry out that right;³ and also with the right to enter upon, take and occupy such land and other property, as may be requisite for the purposes of such corporations.⁴

1. Printing and publishing: Act 14 April, 1851, § 19; P. L. 576; Act 3 March, 1868; P. L. 45.

2. Transportation companies: Act 27 March, 1854, § 4; P. L. 215.

3. Purchase and sale of United States patents, of rights and licenses thereunder, and the manufacture and sale of patented articles: Act 27 March, 1867; P. L. 47.

4. Horticultural and agricultural business: Act 17 March, 1871; P. L. 292.

5. Petroleum transportation and storage companies: Act 12 March, 1872; P. L. 22, Act of April 1873; P. L. 66.

6. Erection of piers for wharves, bridges and submarine operations: Act 27 March, 1873; P. L. 49.

Of these, the first, third and fifth items are expressly provided for in the Act of 1874, as is also the second item so far as relates to transportation by vessels or stages.

¹ These are private, and not public, corporations: *Girard Storage Co. v. Southwark Foundry Co.*, 105 P. O. 248; *Re Daupin Light and Heat Co.*, O. A. G., March 9, 1886.

² For special provisions as to these companies see *infra*, § 50.

³ The certificate of incorporation need not state either the termini or the general route and may include authority to construct a limited telegraph line as a necessary "device or arrangement;" *Re Southwest Pipe Line*, O. A. G., December 8, 1885.

⁴ Act of 2 June, 1883, § 1; P. L. 61. The 18th clause of the second sub-division, § 1 of the Act of 1874, authorizing the creation of certain corporations was twice amended in the legislation of 1883, viz.: By the Act of 2 June, 1883, which contained the provision above recited, authorizing the incorporation of petroleum and pipe line companies, and also by the Act of 22 June, 1883, P. L. 156, where the above provision as to those companies is omitted; and in 1889, when the 18th clause aforesaid was further amended by the Act of 21 May, 1889, P. L. 259, the amending Act of 22 June, 1883, was adopted as the basis of further amendment, and the above provision as to pipe line and petroleum companies again omitted. The omission in the Act of 22 June, 1883 (and hence in the subsequent amending Act of 1889) may have been unintentional owing to the acts being passed at the same session. For the apparent purpose of all subsequent amendatory acts was that of

XIX. The insurance of owners of real estate, mortgages and others interested in real estate, from loss by reason of defective titles, liens and incumbrances.¹

XX. The re-chartering of corporations of either of these classes, the charters whereof are about to expire.

XXI. The construction and maintenance of a wharf or wharves, for public and private use, and the maintenance of any unincorporated wharf or wharves already constructed.

XXII. The construction, erection and maintenance of observatories for public use or scientific purposes.

XXIII. The formation and operation of stage and omnibus lines.

XXIV. The formation and operation of inclined planes for the transportation of passengers and freight.²

XXV. The construction and operation of motors and cables, and the necessary apparatus and mechanical fixtures for applying and operating the same.³

3. Mode of Incorporation.⁴—The charter of an intended corporation must be subscribed by five or more persons,⁵ three of whom

including corporations previously excluded from the Act of 1874, and not excluding those previously included. Moreover, the Act of 2 June, 1883, contains elaborate provisions as to the right of such pipe line and petroleum companies incorporated under the Act of 1874. See these special provisions *infra*, § 48.

¹ Act 29 April, 1874, as amended by Act 17 April, 1876, § 2; P. L. 31. This clause is not repealed by the Act of 1 May, 1876 [P. L. 53], as the latter statute does not provide for this species of insurance, and § 57 thereof permits organization under any prior act when such organization is not provided for by the Act of 1876; O. A. G. June 9, 1880; Id. August 11, 1881. For special provisions as to these companies see *infra*, § 37.

² For special provisions as to these companies see *infra*, § 47.

³ Act 13 June, 1883, § 6, P. L. 123. In addition to the above, various statutes have since been passed with reference to corporations excluded from the Act of 1874 and its supplements, viz.:

Insurance Companies: Act 1 May, 1876, P. L. 53; Act 29 June, 1881, P. L. 121; Act 5 June, 1883, P. L. 80; *Re* Fidelity Mutual Aid Association, 39 Leg. Int. 257.

Banks: Act 13 May, 1876, P. L. 161; Act 4 June, 1879, P. L. 94; Act 11 June, 1879, P. L. 133; Act 22 June, 1883, P. L. 155.

Street Railway Companies: Act 14 May, 1889, P. L. 217.

Street Railway Companies in cities of second, third, fourth and fifth class: Act 19 March, 1879, P. L. 9; Act 2 June, 1881, P. L. 39; Act 23 May, 1878, P. L. 111.

Savings Banks: Act 20 May, 1889, P. L. 246.

Co-operative Associations productive and distributive: Act 7 June, 1887, P. L. 365.

Natural Gas Companies: Act 29 May, 1885, P. L. 29.

Motor and Cable Companies: Act 22 March, 1887, P. L. 8.

⁴ Act 29 April, 1874, § 3, P. L. 75.

⁵ This provision is mandatory and strict compliance is essential: Evangelical Lutheran Congregation, 6 Phila. Rep. 64; *In re* Phila. Artisans' Institute, 8 Id. 229; 1 Leg. Gaz. Rep. 104; Charter of Red Men's Mutual Relief Association, 10 Phila. Rep. 546; 5 Pitts. L. J. [N. S.] 4. *Re* Helping Hand Marriage Association,

at least must be citizens of this commonwealth,¹ and shall set forth²—

CONTENTS OF CERTIFICATE.

I. The name of the corporation.³

II. The purpose for which it is formed.⁴

38 Leg. Int. 423; *Tillyer v. Hero Jar Co.*, 42 Leg. Int. 150. All named as subscribers must subscribe; *Re Echo Park Association*, 5 Pa. C. Ct. Rep. 382. If but five subscribe and one be under disability the application will be rejected; *O. A. G.*, Nov. 6, 1879; *Id.* 24 April, 1883.

¹ This fact should appear by petition or affidavit; *In re Enterprise Mutual Benefic Association*, 10 Phila. Rep. 380; 32 Leg. Int. 82; *O. A. G.*, March 8, 1877.

² The charter should be engrossed upon a single sheet of paper or parchment without interlineations; *The Alexander Presbyterian Church of Philadelphia*, 30 Pa. 154; *The United Daughters of Cornish*, 35 *Id.* 80; *In re Phila. Artisans' Institute*, 8 Phila. Rep. 229; 1 Leg. Gaz. Rep. 104; *In re Tara Benevolent Society*, 9 Phila. Rep. 237; *In re The Stevedores' Beneficial Association*, 14 Phila. Rep. 130; *Re St. Luke's Church*, 41 Leg. Int. 74.

³ "The name is an indispensable part of the constitution of every corporation, the knot of its combination, without which it cannot perform its corporate functions." *Re Fidelity Mutual Aid Ass'n*, 15 Phila. Rep. 330; 12 Weekly Notes Cas. 269; and incorporation can be had under a name indicative of political belief: *Re Central Democratic Ass'n*, 46 Leg. Int. 380. But while there may be "nothing in the adoption of a name which is borne by another which infracts any known law" (*Re Baptist Church*, 3 Haz. Pa. Reg. 226; s. c. 1 *Id.* 75); yet approval will generally be withheld if the name conflicts with that of an existing corporation: *First Presbyterian Church of Harrisburg*, 2 Grant's Cases, 240; *In re Sons of Progress*, 14 Weekly Notes Cas. 31; or only granted under special circumstances, as *In re First Presbyterian Church of Bloomfield*, 111 Pa. 156, where the court said (p. 159), "We should probably refuse to sanction it, but for the action of the presbytery." If an existing name is adopted, obviously the property and charter rights of the first corporation are in nowise affected thereby: *Re First Presbyterian Church of Bloomfield*, 111 Pa. 156.

⁴ The purposes must be precisely and accurately stated in the charter itself and must be so specifically defined as to clearly come within the meaning of the act and afford full information to co-associates: *The National Literary Association*, 30 Pa. 150; *In re Supreme Temple of the Order of Plato*, 42 Leg. Int. 444; *In re Independent Order Silver Star*, 1 Luz. Leg. Rep. 768; *In re Deveaux*, 54 Geo. 673; and charters for enumerated objects "and other purposes" will be rejected; *In re Journalists' Fund*, 8 Phila. Rep. 272; so as to mining for "minerals," *O. A. G.*; *Re Glenwood Co.*, 6 Pa. Co. Ct. Rep. 575. Approval will likewise be withheld from charters containing indefinite statements of offenses which may result in expulsion: *Butchers' Beneficial Association*, 35 Pa. 151; 39 Pa. 298; *Beneficial Association of Brotherly Unity*, *Id.* 299; *Sarsfield Beneficial Society*, 6 Phila. Rep. 64; *In re Phila. Artisans' Institute*, 8 *Id.* 229; *In re Journalists' Fund*, *Id.* 272.

In associations for "the support of public worship" the tenets of the parties should be explicitly stated: *In re J. Elimar Mira Mitta Congregation*, 42 Leg. Int. 286; but incorporation may be had according to the doctrines of a particular sect without showing affirmative compliance with the canons of that sect: *In re Church of the Holy Communion*, 37 Leg. Int. 194. In such cases the application should be made in general terms and articles will not be approved which vest the control of the corporate property elsewhere than in the lay members, or those elected or appointed by such lay members: *The Alexander Presbyterian Church*, 30 Pa. 154; *In re St. Paul's Church*, *Id.* 151; *In re Church of Holy Communion*, *supra*; *Re Powelton Avenue Baptist Church*, 15 Phila. Rep. 325; *Trustees v. Harrison*, 12 Weekly Notes Cas. 32; *Re St. Luke's Church*, 41 Leg. Int. 14.

In beneficial societies the application of the funds must be restricted to the pur-

III. The place or places where its business is to be transacted.¹

IV. The term for which it is to exist.²

V. The names and residences of the subscribers and the number of shares subscribed by each.³

VI. The number of its directors and the names and residences of those who are chosen directors for the first year.⁴

VII. The amount of its capital stock, if any, and the number and par value of shares into which it is divided.⁵

poses of the association: German General Beneficial Association, 6 Casey, 155; *Re* Christ Church of Beaver Falls, 5 Pa. County Ct. Rep. 121.

By instructions issued by the Secretary of the Commonwealth on December 12, 1888, it is provided that "The purposes of the corporation should be stated concisely, and diverse purposes should not be combined in one application. The rights to be enjoyed need not be enumerated."

¹The mere location of an office is not sufficient: *In re* The Enterprise Mutual Beneficial Association, 10 Phila. Rep. 380. It must be the principal place or places of business for the purposes of taxation and service of process: *Re* Mann Mining Co., O. A. G., 2 Chester Co. Rep. 90; and in New York under somewhat similar statutes it is held that the certificate is conclusive as to this: *Western Transportation Co. v. Schen*, 19 N. Y. 408. But it is unnecessary to minutely specify by metes and bounds the territory within which the corporation may exercise its franchises: *Re* Anthracite Water Co., O. A. G., March 29, 1882.

By the Act of 18 March, 1879 [P. L. 7], it is provided that whenever under any general or special act the principal office of any corporation must be kept in any particular place, the majority of stockholders thereof, may, by a prescribed certificate, election and return, remove the office to any other specified place within the same county.

²This may be either perpetually or for a limited time: *Infra*, p. 24.

³The capital stock need not be all subscribed; O. A. G., 28 September, 1874; Id. 10 November, 1874. But the interest of each subscriber, though small, must be real, and co-associates will not be permitted to prove that a subscriber was without actual interest, and that his name was merely used to comply with the statutory requirements: *Tillyer v. Hero Jar Co.*, 42 Leg. Int. 150.

⁴For number and residence of directors see *infra*, p. 25-27. The State Department will not approve a charter wherein the treasurer is named as director; *infra*, p. 20, n. 1. This article "plainly indicates that the application for incorporation is to be made by an existing association, presenting its constitution for legal approval." Charter of Red Men's Relief Association, 10 Phila. Rep. 546; 31 Leg. Int. 254; 5 Pitts. L. J. [N. S.] 4; *Re* Gibbs, 3 Pitts. Rep. 499. But it is not necessary that the directors should be either subscribers to the stock or corporators: O. A. G., 11 Oct., 1880; *Densmore Oil Co. v. Densmore*, 54 Pa. 43; *Re* British Provident Life Ass'n, L. R. 5 Ch. Div. 306.

By the Act of 23 May, 1887, P. L. 65, it is provided that it shall be lawful to insert in any charter or amendment of a charter for a corporation of the first class, under the "corporation act of one thousand eight hundred and seventy-four," and its supplements, a provision or provisions that the directors, managers, trustees, vestrymen, or other governing body, as the case may be of such corporation may be elected so that a half or a third or fourth of the whole number only shall be elected each year the distribution to be made in such manner as the charter may direct.

Sec. II. And be it further enacted that, in all cases heretofore in which such provisions have been introduced into any charter or a corporation of the first class, or in any amendment of a charter of any such corporation, either antedating the said act of one thousand eight hundred and seventy-four or otherwise, and has been approved by the proper court and duly recorded, said provision of said charter or amendment is hereby ratified and confirmed.

⁵Charters of corporations of the first class must contain a limitation on the yearly income of the corporation other than that from real estate: *Re* St. Luke's Meth.

NOTICE TO BE GIVEN. ADVERTISEMENT.¹—Notice of the intention to apply for any such charter² shall be inserted³ in two newspapers of general circulation,⁴ printed in the proper county,⁵ for three weeks,⁶ setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor.⁷

Epis. Church, 41 Leg. Int. 74; *Re Mary Elizabeth Patterson Memorial Church*, Id. 253, and may contain provisions as to the election of directors: Act of 23 May, 1887, P. L. 165, *supra*, p. 16, n. 4: and as to the nomination of directors in certain corporations for purposes of literature, science, libraries, music, or the fine arts: Act 25 June, 1885, P. L. 177.

Certificates of incorporation of the second class (excepting building and loan associations), must also state that ten per cent. of the capital stock has been paid in cash to the treasurer, together with the name and residence of the latter (*infra*, p. 19, 20).

Additional provisions must also be inserted in charters for

Road companies, see *infra*, section 38.

Ferry, Wharf and Bridge Companies, see *infra*, section 39.

Telegraph Companies, see *infra*, section 40.

Light, Heat and Fuel Companies, *infra*, section 41.

See the various forms in the appendix, *infra*.

But with these exceptions the above clauses are all the charter need contain, and approval has been withheld owing to the insertion of unnecessary and irrelevant matter: *Re Pottsville Mechanics' Savings Fund*, O. A. G., 26 Feb., 1875; *Re Glenwood Co.*, O. A. G., 6 Pa. C. Ct. Rep. 578. Hence, provisions for internal management should not therein appear: *In re The Stevedores' Beneficial Association*, 14 Phila. Rep. 130; *Re M. E. Patterson Memorial Church*, 41 Leg. Int. 253; *Re St. Luke's Church*, Id. 74. And unauthorized provisions and all acts in pursuance thereof will be invalid: *Albright v. Lafayette Ass'n*, 102 Pa. 412; *Re Central Democratic Ass'n*, 46 Leg. Int. 380. If, however, additional clauses are inserted, which, though surplusage, are yet unobjectionable, they will, if not wholly rejected, be probably construed in conformity with the decisions prior to the statute. Thus a power to adopt by laws must be expressly subject to the provisions of section five of the Act of 29 April, 1874: *infra*, p. 24; *The National Literary Association*, 35 Pa. 150; *German General Beneficial Association*, Id. 155; *Butchers' Beneficial Association*, 35 Pa. 151; *In re Phila. Artisans' Institute*, 8 Phila. Rep. 229. A power to dissolve must not restrain a majority from so doing: *The National Literary Association*; *German General Beneficial Association*, *ubi supra*; *The United Daughters of Cornish*, 35 Pa. 80; and a power of expulsion must clearly define the causes therefor: *supra*, p. 15, n. 4, and be not opposed to public policy: *In re Molholland Benevolent Society*, 10 Phila. Rep. 19.

¹ Act 29 April, 1874, § 3; P. L. 75.

² This includes application for re-charters under section 40 of the Act of 29 April, 1874, *infra*, sect. 27: *Re Port Triverton Ferry Co.* O. A. G., 8 Jan., 1876.

³ In the English language: *Re Chartiers Ferry Co.*, 2 Chester Co. Rep. 91; *Tyler v. Bowen*, 1 Pitts. Rep. 235; *Upper Hanover Road*, 44 Pa. 277.

⁴ Exclusive of insertions in legal publications (i. e., *The Legal Intelligencer*, etc.) required under local statutes and rules of court: *In re Enterprise Mutual Benefit Association*, 10 Phila. Rep. 380; *In re Application for Charter*, 11 Phila. Rep. 200; 33 Leg. Int. 158.

⁵ Being the county or counties wherein the corporate franchises are to be exercised: *Re Chartiers Ferry Co.*, 2 Chester Co. Rep. 91.

⁶ Practice has settled this to mean once a week for three weeks, provided that full twenty-one days elapse between the first publication and the application for the charter: *Re Shamokin Coal Gas Co.*, O. A. G., August 19, 1874; *Bowen v. Argall*, 24 Wendell, 496; *Re King*, 5 Benedict, 453, and see Act 23 June, 1883, § 2, P. L. 122 (*infra*, sect. 30), where the amendments are directed to be advertised "once a week for three weeks."

⁷ The advertisement must state the object of the corporation and the time and place when and where the application will be made: *In re Parrish M. E. Church*.

CERTIFICATES FOR FIRST CLASS.¹—The said certificates of incorporation of the first class shall be acknowledged by at least three of those who subscribe to them before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county,² accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class specified in the foregoing section, and shall appear lawful and not injurious to the community,³ he shall indorse there-

3 Luz. Leg. Reg. 128; 4 Pitts. L. J. [N. S.] 204; *In re Enterprise Mutual Beneficial Association*, 10 Phila. Rep. 380; 32 Leg. Int. 82.

As to corporations of the *first class* in Philadelphia county it is provided by a joint rule of the Courts of Common Pleas, adopted 5 February, 1877: "All notices of application for charters of incorporation shall set forth the particular court to which application is to be made and the time when it will be heard." And, moreover, pending the advertisement, certificates of corporations of the first class should be lodged in the prothonotary's office for public inspection: *In re Church of the Holy Communion*, 8 Weekly Notes Cas. 357; 14 Phila. Rep. 121, 128; *Re St. Luke's M. E. Church*, 41 Leg. Int. 74. In the latter case, as reported in 37 Leg. Int. 194, it was held that an amendment not essentially changing the object of the association made after advertisement and before approval, would not necessitate further advertising.

As to corporations of the *second class* the following additional rules were, in December, 1883, adopted by the Secretary of the Commonwealth:

First. The notice of intention to apply for a charter must give the names of five subscribers to the charter.

Second. The charter must be on file in the office of the Secretary of the Commonwealth during the three weeks of publication.

Third. In the notice published a time must be designated, within or at which the application will be made, and that time must be at least twenty-one days after first publication.

By instructions issued by the Secretary of the Commonwealth on December 12, 1888, the time stated should also not fall on Saturday, the State Treasury being closed on that day, and re-advertisement will be required on applications not received within thirty days of the time designated in the notice.

¹Act 29 April, 1874, § 3, P. L. 75.

²The Supreme Court will not approve a charter: *In re Tara Benevolent Society*, 9 Phila. Rep. 287. In Philadelphia county the application, when made to Courts of Common Pleas Nos. 2 and 4, is placed upon the motion lists; in Courts of Common Pleas Nos. 1 and 3, a contrary practice prevails.

³"This clearly imposes the duty of investigation beyond the face of the charter of the circumstances connected with or surrounding the application." *Re Central Democratic Association*, 46 Leg. Int. 380. And a charter will not be granted for an Electropathic Institute with power to confer degrees where the charter does not require the graduates to fulfill the requirements of the Act of 24 March, 1877 [P. L. 42]: *Re Electropathic Institute*, 9 Weekly Notes Cas. 31; 14 Phila. Rep. 128; nor to associations whose object is, upon the marriage of any of their members, to raise a fund for such member by mutual assessment: *Re Quaker City Ass'n*, 10 Weekly Notes Cas. 467; *Re Mutual Aid Ass'n*, 38 Leg. Int. 423; *Re Helping Hand Ass'n*, Id.; nor where full corporate rights are conferred upon minors: *Re M. E. Patterson Memorial Church*, 41 Leg. Int. 203; nor for corporations for "the ordination of ministers" this being a purely ecclesiastical matter: *Re The Christian Workers*, C. P. 1 (Phila. Co.), July 11, 1885;

on these facts, and shall order and decree thereon that the charter is approved,¹ and that upon the recording of the said charter and order,² the subscribers thereto and their associates, shall be a corporation for the purposes and upon the terms therein stated,³ and the said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given.⁴

CERTIFICATES FOR SECOND CLASS.⁵—The certificate for a corporation embraced within the second class, named in the foregoing section, shall set forth all that is hereinbefore required to be set forth, and except building and loan associations, shall also state that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation,⁶ and the name and residence

nor for "suppressing the manufacture of and traffic in spirituous liquor," such business being a lawful occupation: *Re Women's Christian Temperance Union*, C. P. 1 (Phila. Co.), July 11, 1885; and where the purposes are so vaguely stated that it does not clearly appear that they are lawful and not injurious: *Re J. Elimar Mitta Congregation*, 42 Leg. Int. 286; *Re Supreme Temple of the Order of Plato*, Id. 444; *Re Independent Order of the Silver Star*, 1 Luz. Leg. Reg. 768.

¹ This commits the approval of the charter to the legal discretion of the judge, from whose action no appeal lies, but whose discretion can be reviewed on certiorari: *Dortley's Ap.*, 26 Pitts Leg. Jour. 63; *Vaux's Ap.* 100 Pa. 502; *Re Grand Lodge*, 110 Pa. 613; *Re First Presbyterian Church of Bloomfield*, 111 Pa., 156; for in examining charters "the court acts under the grant of an extraordinary power, of a special nature, and confined to the cases described in the Act of Assembly:" *St. Mary's Church*, 6 S. & R. 505; and immunity from taxation cannot be enforced by reason of the court having approved a charter containing such a provision: *County of Cambria v. Academy of St. Francis*, 19 Rep. 315 [S. C. of Pa.]. The application and action of the court constitute an adjudication, and after rejection the application cannot be withdrawn: *In re Philadelphia Relief Ass'n*, 7 Weekly Notes Cas. 146; and when the charter is refused the reason for such refusal should be indorsed upon the charter and thus become part of the record: *Vaux's Ap.*, 109 Pa. 497.

² After record, the corporation is entitled to possession of the charter; it cannot be retained by the prothonotary: *Re Union Church*, 1 Chester Co. Rep. 459.

³ Although the statute be a general public law, yet charters of private corporations organized thereunder are private acts and must be so pleaded and proved: *First National Bank v. Gruber*, 87 Pa. 468.

⁴ In Philadelphia county the usual fees are, exclusive of professional and conveying expenses:

Court Costs,	\$5.00
Advertising in the <i>Legal Intelligencer</i> and two other newspapers (about)	17.00
Affidavit to certificate before Recorder of Deeds,	1.00
Affidavit of residence and publication,	50
Recording Charter,	3.00

⁵ Act 29 April, 1874, § 3; P. L. 76.

⁶ Payment of this ten per cent. is imperative upon all corporations (except building and loan associations), even from those accepting the provisions of section 17 of Act 29 April, 1874 [*infra*, p 40], although it is immaterial by whom paid: O. A. G., 26 April, 1876; Id. 23 June, 1876; and payment must be in cash—not in "its equivalent:" O. A. G., 24 May, 1877; but it is not necessary that the entire capital should have been subscribed: O. A. G., 28 Sept., 1875; Id. 10 Nov., 1874.

of such treasurer shall be therein given.¹ **ACKNOWLEDGMENT.**—The same shall be acknowledged by at least three of the subscribers thereto, before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and they shall also make and subscribe an oath or affirmation before him, to be indorsed on the said certificate, that the statements contained therein are true. **PRESENTATION TO GOVERNOR.**—The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced² to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named in the second class, specified in the foregoing section, he shall approve thereof and indorse his approval thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen.³ **RECORDING CERTIFICATE.**—And the said certificate shall be recorded in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation.⁴ The said original certificate, with all of

In *Com. v. Gray's Mineral Fountain Co.*, 46 Leg. Int. 118, the Common Pleas of Dauphin Co. held in *quo warranto* proceedings that non-payment of the ten per cent. invalidated the charter after letters-patent had issued. (See *Com. v. West Chester R. R.*, 3 Grant's Cases, 200.) In the absence of express provisions requiring original subscribers to pay a certain percentage, one who suffers his name to remain on the articles until organization cannot defeat his subscription by such non-payment: *Garrett v. Dillsburg R. R.* 78 Pa. 465; *aliter* when the statute declares that no subscription shall be valid unless such percentage be then paid, and no subsequent acts of estoppel exist: *Boyd v. Peach Bottom Railway*, 90 Pa. 169; and giving a note is not payment: *Leighty v. The Turnpike Co.*, 14 S. & R. 434; *Boyd v. Peach Bottom Railway*, *supra*; *Jersey City Gas Co. v. Dwight*, 29 N. J. Eq. 246.

¹ The offices of director and treasurer are incompatible offices, and the State Department will not approve a charter wherein a director is named as treasurer: *O. A. G.*, Jan. 22, 1887; Act 31 March, 1860, § 66, P. L. 400; Act 31 March, 1868, § 1, P. L. 50; *Com. v. Christian*, 9 Phila. Rep. 557. *Infra*, p. 26, n. 2.

² By instructions issued by the Secretary of the Commonwealth on December 12, 1888, it is provided, "Protests against the issuing of letters-patent upon any application should be filed in this office as soon after the first publication of notice as practicable. The protest should briefly set forth the ground of opposition and the interest of the protestants, and must be specific, giving the full and correct name of the company against whose application it is filed, and designating the date when the application is advertised to be made.

"A day for hearing will then be appointed, at which time all parties will be heard by counsel or in person."

³ After letters-patent have issued, a court of equity can neither enjoin the organization nor forfeit the franchises: *Mitcheson v. Harlan*, 3 Phila. Rep. 385; *Lejee v. Continental Passenger Railway*, 10 Phila. Rep. 362; 32 Leg. Int. 386. *A scire facias* to repeal the letters-patent is the appropriate remedy: *Com. v. Boley*, 1 Weekly Notes Cas. 303; or *quo warranto* at the suit of the commonwealth: *Kishacoquillas Co. v. McConaby*, 16 S. & R. 145; *Com. v. Gray's Mineral Fountain Co.*, 46 Leg. Int. 118; a private relator cannot institute *quod warranto* for this purpose: *Murphy v. Bank*, 20 Pa. 415; *Com. v. Phila.*, etc., R. R., 10 Weekly Notes Cas. 400.

⁴ And all corporations must themselves make the return prescribed by § 1 of the

its indorsements, shall then be recorded in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation, for the purposes and upon the terms named in the said charter.¹

EVIDENCE.²—Certified copies of both the records thereof and of the charters of the corporations named in the first class specified in the foregoing section, shall be competent evidence for all purposes in the courts of this commonwealth.

FEES.³—The secretary of the commonwealth shall charge and receive a fee of five dollars upon every paper relating to a corporation filed or recorded in his office.

WHEN EXECUTORS AND TRUSTEES MAY ORGANIZE COMPANIES.⁴
—Corporations for profit may be organized by executors or trustees acting under a will authorizing or directing them to carry on or continue a business of the testator with any other purpose than that of winding up the same, in the usual manner, whenever the business is such that a charter could have been obtained by the testator, to conduct the same, under the then existing laws of this commonwealth. And the executors or trustees may unite with others in the organization of such corporations, and contribute the property, the legal title to which is vested in them, as capital to the corporations on terms to be agreed upon by the associates, and accept stock in the corporations in lieu thereof.

First. The whole of the proceeds of the trust estate, whether contributed or sold, and whether paid for by shares or money, shall be held on the same uses and for the same trusts and persons, and subject to the same powers, as the estate and property was held for or under before the organization.

Second. All persons having a beneficial interest, vested or contingent, who are in being at the time of such organization and are of full age, shall consent in writing to the organization. All persons who are in being and interested, immediately or contingently, if under age or *non compos mentis*, shall, by a guardian or committee to

Act of 1 June, 1889, *infra*, p. 46; *Re St. Luke's Church*, 41 Leg. Int. 74; *Re First Presbyterian Church of Bloomfield*, 107 Pa. 543.

¹The corporate existence cannot be collaterally attacked for any cause, and this, whether the corporation be specially chartered or organized under general laws: *Cochran v. Arnold*, 58 Pa. 405 (overruling *Paterson v. Arnold*, 9 Wright, 410); *Garrett v. Dillsburg Railway*, 78 Pa. 465; *Freeland v. Penna. Central Ins. Co.*, 94 Pa. 504; *Johnston v. Elizabeth Ass'n*, 104 Pa. 394.

²Act 29 April, 1874, § 3; P. L. 76.

³*Id.*

⁴Act 22 April, 1889, P. L. 42.

be appointed for that purpose, consent. The husbands of all married women interested, if not living separate and apart, shall consent.

Third. The Orphans' Court of the county shall, upon petition, inquire into the circumstances and give their sanction to the terms and conditions of the organization. In appointing guardians or committees to inquire and consent under this act, no security shall be demanded, nor shall such guardians or committees be entitled to receive any property of the beneficiary, other than the compensation for his services ordered by the court.

HOW FOREIGN CORPORATIONS MAY BECOME DOMESTIC.¹—Corporations created by or under the laws of any other state, doing business in this state, and in which three or more stockholders are citizens of this state, and which are embraced within corporations of the second class defined in section two of an act approved 29th April, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," may become corporations of this state, under the provisions of said last mentioned act, by preparing, having approved and recorded a certificate, in which shall be stated

WHAT CERTIFICATE OF FOREIGN CORPORATION TO STATE.

First. The name of the corporation.

Second. Its purpose.

Third. The place or places where its business is to be transacted.

Fourth. The term for which it is to exist.

Fifth. The names and residences of the stockholders and the number of shares held by each.

Sixth. The number of its directors, and the names and residences of those elected for the current year.

Seventh. The amount of its capital stock and the number and par value of the shares into which it is divided.

Eighth. The legislation under which it was originally created.

Ninth. Its financial condition at the date of the certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any.²

Said certificate shall be accompanied by a certificate, under the seal of the corporation, showing the consent of a majority in interest of such corporation to such application for a charter, and to a renun-

¹ Act 9 June, 1881, § 1; P. L. 89.

² This statute does not specifically require that ten per cent. of the capital stock shall have been paid in cash, and certificates have been previously approved without this requirement; but on 18 November, 1887, the Secretary of the Commonwealth decided that thereafter the certificate of a foreign corporation seeking to become domestic must in this regard comply with the provisions of the Act of 1874: *Re Foreign Corporations*, 5 Pa. C. Ct. Rep. 231. The bonus to the commonwealth must also be paid upon the authorized capital under § 44 of the Act of 1879, *infra*, § 32.

ciation of its original charter and of all privileges not enjoyed by corporations of its class, under the laws of this commonwealth.

CERTIFICATE OF FOREIGN CORPORATION TO BE ACKNOWLEDGED.¹—Said certificates shall be acknowledged by at least three of the directors of said corporation, before the recorder of deeds of the county in which the chief operations are to be carried on or in which the principal office is situated, and said directors shall also make and subscribe an oath or affirmation before him, to be indorsed on the said certificate, that the statements contained therein are true.

GOVERNOR TO EXAMINE.²—The said certificate shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named for corporations of the second class in the said second section of said Act of April twenty-ninth, one thousand eight hundred and seventy-four, before mentioned, he shall approve thereof and indorse his approval thereon, and direct letters-patent to issue, in the usual form, incorporating said stockholders and their successors into a body politic and corporate in deed and in law by the name chosen.

RECORD OF CERTIFICATE.³—And the said certificate shall be recorded, in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish the auditor general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation; the said original certificate, with all its indorsements, shall then be recorded in the office for the recording of deeds in and for the county, where the chief operations are to be carried on.

POWERS OF FOREIGN CORPORATION BECOMING DOMESTIC.⁴—From the date of said letters-patent, said corporation shall be and exist as a corporation of this commonwealth, under the provisions of law regulating corporations of its class and of its charter; and all of the rights, privileges, powers, immunities, lands, property and assets, of whatever kind or character the same may be, possessed and owned by the original corporation, shall vest in, and be owned and enjoyed by, the said corporation so created as fully and with like effect as if its original charter had remained in force, save as by general law and said certificate expressly stated otherwise; and all suits, claims and demands by said corporation in existence at the date of said new charter shall and

¹ Act 9 June, 1881, § 2; P. L. 89.

² Id.

³ Id.

⁴ Id., § 3.

may be sued, prosecuted and collected under the laws governing the said corporation prior to its new charter, and claims and demands of every nature and character in existence at the date of said new charter may be collected from and of said new chartered corporation, as fully and with like effect as if no change had taken place.

4. Length of Grant—Power to Revoke.¹—The charters of incorporations named in this act may be made perpetual, or may be limited in time by their own provisions; and the general assembly reserves the power to revoke or annul any charter of incorporation granted or accepted under the provisions of this act, whenever in the opinion of the said general assembly it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators or their successors.²

5. By-Laws.³—The by-laws of every corporation created under the provisions of this statute, or accepting the same, shall be deemed and taken to be its law, subordinate to this statute, the charter of the same, the constitution and laws of this commonwealth, and the constitution of the United States.⁴ They shall be made by the stockholders or members of the corporation, at a general meeting called for that purpose, unless the charter prescribes another body, or a different mode.⁵ They shall prescribe the time and place of meeting of the corporation, the powers and duties of its officials, and such other matters⁶ as may be pertinent and necessary for the business to be

¹ Act 29 April, 1874, § 4; P. L. 76.

² Constitution of Pennsylvania, Art. XVI, § 10; *New Jersey v. Yard*, 95 U. S. 104; *Erie R. R. v. Casey*, 26 Pa. 287; 1 Grant's Cas. 274.

³ Act 29 April, 1874, § 5; P. L. 77.

⁴ By-laws must conform to the provisions and spirit of the charter, or, when the charter is silent, to the common law and the particular nature and purpose of the corporation: *Com. v. Gill*, 3 Wharton, 248; *Com. v. Fisher*, 7 Phila. Rep. 264; *Rayner v. Beatty*, 14 Phila. Rep. 80; (see *Angell & Ames on Corporations*, § 345, for instances wherein by-laws have been adjudged invalid upon this doctrine.) By-laws must also be reasonable, and those which are unequal, oppressive, or clearly injurious to the corporate interests, are invalid: *Com. v. Gill*, *supra*; *Granger v. Grubb*, 7 Phila. Rep. 350; *Hibernia Fire Engine Co. v. Com.*, 8 Weekly Notes Cas. 320: and the reasonableness of the by-law is solely a question for the court: *Hibernia Fire Engine Co. v. Com.*, *ubi supra*.

⁵ Unless authorized by the charter the board of directors have no power to make by-laws nor to alter, amend or repeal the same: *United Fire Association v. Benseman*, 4 Weekly Notes Cas. 1; *Morton Co. v. Wysong*, 51 Ind. 4: but when chartered authority to enact by-laws is conferred upon the board of directors, they may validly adopt a by-law authorizing voting by proxy at all meetings of the corporation: *Wilson v. American Academy of Music*, 43 Leg. Int. 86: and even in the absence of authority the affirmations and acquiescence of a member may estop him from questioning the mode in which the by-laws have been enacted: *Morrison v. Dorsey*, 48 Md. 462.

⁶ Such as what constitutes a quorum of stockholders: *infra*, p. 28.

transacted, and may contain penalties for the breach thereof, not exceeding twenty dollars.¹

6. Officers and their Duties.²—The business of every corporation created hereunder, or accepting the same, shall be managed and conducted by a president, a board of directors or trustees, a clerk, a treasurer, and such other officers, agents and factors as the corporation authorizes for that purpose.³

DIRECTORS OR TRUSTEES.⁴—The directors or trustees shall be chosen annually⁵ by the stockholders or members, at the time fixed by the

¹ By-laws regulate rights between the corporation and its members and their representatives: *Waln v. Bank*, 8 S. & R. 89; *Martin v. Railroad Co.*, 30 La. An. 308; and knowledge of the rules regulations and by-laws of the company will be imputed to its stockholders and its officers: *Bedford Railroad Co. v. Bowser*, 48 Pa. 37; *Hurter v. Sun Mutual Ins. Co.*, 26 La. An. 13 (*aliter* as to their sureties: *Atlantic R. R. Co. v. Cowles*, 69 N. C. 59). Hence, where no salary is attached to the office none can be recovered: *Kilpatrick v. Penrose Ferry Bridge Company*, 49 Pa. 118; *Field v. Union Box Co.*, 2 Weekly Notes Cas. 426. Nor when the salary is fixed will extra compensation be allowed for extra services: *Carr v. Charters Coal Co.*, 25 Pa. 337; and a resolution remunerating officers who had been elected to serve without compensation is merely voluntary and revocable: *Loan Ass'n v. Stonemetz*, 29 Pa. 534. The rights of third persons claiming under such by-laws depend upon the general principles applicable to ordinary cases: *Flint v. Pierce*, 99 Mass. 68.

In *St. Patrick's Society v. McVey*, 92 Pa. 510, it was held that by-laws of beneficial societies regulating the amounts payable by members do not constitute a contract with such members upon their admission to the society, but are subject to future alteration.

² Act 20 April, 1874, § 5; P. L. 77.

WHEN MARRIED WOMEN ELIGIBLE AS OFFICERS.—"In all cases, married women shall be deemed and held qualified or free from any disability on account of coverture, for appointment and acting as corporators or officers of all associations incorporated heretofore, or that may be hereafter incorporated, for the purposes of learning, benevolence, charity or religion." Act 19 April, 1879; P. L. 16.

³ Officers entrusted with the management of the corporate business, are general agents, and private restrictions imposed by the corporation, are immaterial against third persons acting on the faith of the agency: *Grafius v. Land Co.*, 3 Phila. Rep. 447; and as such agents they incur no personal liability when avowedly contracting on behalf of the company: *Beeson v. Lang*, 85 Pa. 198; but judgment cannot be confessed against the corporation by its officers without authority of the directors: *Freeman v. Plaindealer Co.*, 9 Luz. Leg. Reg. 37; *Hardiman v. Phila. Ass'n*, 2 Weekly Notes Cas. 440; and where the by-laws delegate the general charge and direction of the business of the company to the president, such delegation does not include the authority to do an act expressly conferred by another by-law upon a separate committee: *Twelfth Street Market Co. v. Jackson*, 102 Pa. 269; and obviously an officer cannot transfer by estoppel that which he is incapable of doing by contract: *Junction R. R. Co. v. Penna. R. R. Co.*, 80 Pa. 265. Officers, moreover, occupy a *quasi* fiduciary relation to the corporation, and cannot profit by purchasing claims against it: *Hill v. Frazier*, 22 Pa. 320: *aliter* after their fiduciary relation has ceased: *Hammond's Ap.*, 123 Pa. 503.

⁴ Act 29 April, 1874, § 5; P. L. 77.

⁵ This would require the entire body of directors or trustees to be annually elected: *In re Salem's Lutheran Church*, 15 Weekly Notes Cas. 567. But this has been obviated by the Act of 17 June, 1887; P. L. 411, *infra*, p. 27.

by-laws,¹ and shall hold their office until others are chosen and qualified in their stead ; the manner of such choice and of the choice or appointment of all other agents and officers of the company, shall be prescribed by the by-laws. The number of directors or trustees shall not be less than three ; one of them shall be chosen president by the directors, or by the members of the corporation, as the by-laws shall direct.² The members of said corporation may, at a meeting to be called for that purpose, determine, fix or change the number of directors or trustees that shall thereafter govern its affairs ;³ and a major-

¹ Mandamus lies to compel such annual election : *Com. v. Keim*, 38 Leg. Int. 32 ; *The People v. Town of Fairbury*, 51 Ill. 149 ; *The People v. Albany Hospital*, 61 Barbour, 397.

² By the Act of 1860 it is provided : " It shall not be lawful for any councilman, burgess, trustee, manager or director of any corporation, municipality or public institution, to be, at the same time, a treasurer, secretary or other officer, subordinate to the president and directors, who shall receive a salary therefrom, or be the surety of such officer, nor shall any member of any corporation or public institution, or any officer or agent thereof, be in anywise interested in any contract for the sale or furnishing of any supplies, or materials to be furnished to, or for the use of any corporation, municipality or public institution of which he shall be a member or officer, or for which he shall be an agent, nor directly nor indirectly interested therein, nor receive any reward or gratuity from any person interested in such contract or sale ; and any person violating these provisions, or either of them, shall forfeit his membership in such corporation, municipality or institution, and his office or appointment thereunder, and shall be held guilty of a misdemeanor, and on conviction thereof, be sentenced to pay a fine, not exceeding five hundred dollars : *Provided*, That nothing in this section contained, shall prevent a vice-president of any bank from being a director of such bank, or of receiving a salary as vice-president : " Act 31 March, 1860, § 66 ; P. L. 400. See *Com. v. Christian*, 9 Phila. Rep. 557 ; *Borough of Milford v. Milford Water Co.*, 23 Weekly Notes Cas. 413 ; *Com. v. Baldwin*, 5 Pa. C. Ct. Rep. 509.

And by the Act of 1868 it is further provided : " It shall and may be lawful for any and all companies incorporated or organized under the laws of this commonwealth, including those authorized thereby to transport merchandise or other property, and also for the directors, managers or trustees thereof, with the approval of the stockholders, to invest the surplus or other funds or earnings of such companies, in mortgages on improved real estate, in ground rents, in the loans of the United States, in the purchase from holders thereof of any (of) the shares of the capital stock of the respective company, and also in the public debt of the state of Pennsylvania, or of the city of Philadelphia, or in other good stocks or securities, and to sell and transfer the same, and to re-invest the proceeds of such sales in securities or stocks of like kind, and to prescribe, by resolution of the directors, or by the by-laws of the company, or otherwise, the mode of making such investments, purchases and sales, with the approval of the stockholders, and the amount or amounts thereof to be purchased, and the price or prices to be paid or received therefor, and the re-investment of the proceeds thereof, and to make such compensation, as the said directors, managers or trustees may deem proper, to any director, manager, trustee, treasurer or other agent or officer of such company, for the keeping, receiving, paying, investing or re-investing of any of the moneys belonging to the said company, or for any other services performed by him or them, as agents of the company or otherwise ; and any such companies may change and fix the time of holding their annual election for directors to such a day as they may select, a certificate of such change, duly authenticated by the proper officers of the company, shall be filed with the auditor-general of this commonwealth, within thirty days after such change shall have been made : " Act 31 March, 1868, § 1 ; P. L. 50.

³ Directors who are merely invested with the ordinary powers of executive management cannot radically affect the chartered rights of stockholders : *Baker's Ap.*, 16 Weekly Notes Cas. 445 ; 42 Leg. Int. 226 ; and hence have no authority to dispose

ity of the whole number of such directors or trustees shall be necessary to constitute a quorum.¹

NUMBER, ELECTION AND RESIDENCE OF DIRECTORS.²—It shall be lawful, from and after the passage of this act, for any corporation, chartered or existing by or under any law of this state, to determine, by the vote of its stockholders holding a majority in interest of all of its stock, at a meeting duly called for the purpose, the time of holding the annual meeting for the election of officers of the corporation, and the number of directors that shall thereafter govern its affairs: *Provided*, That the number of directors so determined shall not be less than three nor more than fifteen, and that at least one-third of the directors of every corporation shall be and remain, during their term of service, residents of the state of Pennsylvania: *and provided further*, That this act shall not apply to any company heretofore incorporated, unless such company shall file, in the office of the secretary of the commonwealth, a certificate of the acceptance of this act, and also of the provisions of the constitution of this commonwealth, which acceptance shall be made by resolution, adopted at a regular or called meeting of the directors, trustees or other proper officer of such corporation, certified under the seal of the corporation, and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

³All acts, or parts of acts, inconsistent herewith, shall be and the same are, in so far as they are inconsistent herewith, hereby repealed.

CLASSIFICATION OF DIRECTORS.⁴—Whenever the stockholders of any corporation incorporated under the Act of April twenty-ninth, one thousand eight hundred and seventy-four, or any other law of this commonwealth, shall, at a meeting called for the purpose, decide, by a majority vote of those present either in person or by proxy, to elect a portion of their directors for a term or terms longer than one year, it may and shall be lawful for such corporations, at the next ensuing election, to divide the directors or managers, which are

of the corporate plant by lease, sale or otherwise: *Martin v. Continental Railway Co.*, 14 Phila. Rep. 10; *Cass v. Iron and Steel Co.*, 9 Federal Reporter, 640; and they are moreover liable to both creditors and stockholders for mismanagement of the corporate assets: *Warren v. Hopkins*, 111 Pa. 328; *Watts' Ap.*, 78 Pa. 370.

¹ Collective action as a board and not individual action as members of the board is necessary to bind the corporation: *Allegheny County Workhouse v. Moore*, 95 Pa. 408; *Twelfth St. Market v. Jackson*, 102 Pa. 273; and if the board meeting be specially convened the general rule is that notice must be served upon every member entitled to be present: *Pike County v. Rowland*, 94 Pa. 241.

² Act 31 May, 1887, § 1; P. L. 281.

³ *Id.*, § 2.

⁴ Act 17 June, 1887, § 1; P. L. 411.

to be chosen, into two, three or four classes, and to elect the first class to serve for the term of one year, and the second, third or fourth to serve for two, three or four years, respectively, and at all ensuing elections of said corporations, the stockholders shall only elect the number of directors necessary to take the place of those whose term of office shall then expire, and such directors shall be elected for the longest term for which any class may have been elected as hereinbefore provided.

¹ Such classification, where already made by charter, is hereby declared valid.

CLERK—SECRETARY.²—The clerk shall be sworn and shall record all the votes of the corporation, and the minutes of its transactions, in a book to be kept for that purpose.³

TREASURER.⁴—The treasurer shall give bond in such sum and with such sureties as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate book account, to his credit as treasurer, and if he shall neglect or refuse so to do, he shall be liable to a penalty of fifty dollars for every day he shall fail to do so, to be recovered at the suit of any informer in an action of debt.⁵

VACANCIES.⁶—In case of the death, removal or resignation of the president or any of the directors, treasurer or other officer of any such company, the remaining directors may supply the vacancy thus created until the next election.

7. Quorum of Stockholders.⁷—Every such corporation may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum; if the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

¹ Act 17 June, 1887, § 2; P. L. 411.

² Act 29 April, 1874, § 5; P. L. 77. Under the Act of 1860 (*supra*, p. 26, n. 2) the offices of secretary and director are incompatible.

³ A stockholder has the right at reasonable times to inspect the corporate books and papers and take minutes thereof for a definite and proper purpose, such as to obtain information necessary to prepare a stockholder's bill for alleged fraudulent corporate management, and such right if denied will be enforced by mandamus: *Phœnix Iron Co., v. Com.*, 113 Pa. 563; s. c. 105 Pa. 112; s. c. 44 Leg. Int. 5.

⁴ Act 29 April, 1874, § 5; P. L. 77. A director cannot be the treasurer, *supra*, p. 20, n. 1.

⁵ Under a somewhat similar statute it has been held that as the treasurer is the recognized responsible custodian of the funds, the directors have no power to deposit them elsewhere: *Pearson v. Tower*, 55 N. H. 215.

⁶ Act 29 April, 1874, § 9; P. L. 78.

⁷ Act 29 April, 1874, § 6; P. L. 77.

8. Certificates of Stock—Transfers.¹—The directors of such corporation shall procure certificates or evidences of stock, and shall deliver them signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation,² to each person or party entitled to receive the same, according to the number of shares by him, her or them respectively held, which certificates or evidences of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, as the by-laws may prescribe,³ subject, however, to all payments due, or to become due thereon;⁴ and the assignee or party to whom the same shall have been so transferred, shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original subscriber or holder would have been,⁵

¹ Act 29 April, 1874, § 7; P. L. 78.

² The corporation is liable to *bona fide* holders of certificates fraudulently issued by its officers: *Willis v. Philadelphia & Darby R. R. Co.*, 6 Weekly Notes Cas. 461; *Tome v. Railroad Co.*, 39 Md. 36.

³ Section 11 of Act 29 April, 1874, provides for transfers on the books of the company, and by section 12 thereof no transfer can be made until all previous calls have been paid, or the stock forfeited for non-payment thereof: *infra*, p. 35.

Between vendor and purchaser the title to stock passes by delivery without actual transfer on the corporate books, subject to the claims of the corporation; and by commercial usage a certificate of stock accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of third parties, presumptive evidence of ownership in the holder: *Wood's Appeal*, 92 Pa. 379; *Com. v. Watmough*, 6 Wh. 117; *Building Ass'n v. Sendmeyer*, 50 Pa. 67; *Finney's Appeal*, 59 Pa. 398; *Prall v. Tilt*, 28 N. J. Eq. 480; *McNeil v. Bank*, 46 N. Y. 325; *Holbrook v. Zinc Co.*, 57 Id. 623. But as between the members and the corporation, the primary evidence of their relation is the records of the company, by which alone are the corporate rights determined: *Bank of Commerce's Appeal*, 73 Pa. 59; *Farrar v. Walker*, 3 Dillon, 506, n.; *Hoppin v. Buffum*, 9 R. I. 513; *Ex parte Willcocks*, 7 Cowen, 511; *Bank v. Cook*, 4 Pick. 406; *McDaniels v. Flower Brook Co.*, 22 Vt. 284.

⁴ The object being to secure *all* liabilities without regard to the time they mature: *Pittsburgh R. R. Co. v. Clarke*, 29 Pa. 153.

⁵ An assignee to whom stock has been transferred upon the corporation books is thereafter liable for future calls, as long as he continues to be the registered owner of the stock: *Lane's Ap.*, 105 Pa. 49; *Bell's Ap.*, 115 Pa. 88; *Reimer Co. v. Rosenberger*, 40 Leg. Int. 383. And this liability is not discharged by a sale of the stock unless followed by transfer to the purchaser upon the corporate books: *Miller v. Peabody Bank*, 15 Weekly Notes Cas. 76; *aliter*, when so followed by transfer: *West Phila. Canal Co. v. Innes*, 3 Wharton, 198. The liability of an original subscriber, however, depends on different grounds, and in a common law action on the contract for subscription an original subscriber is not discharged from liability by reason of having assigned his stock to a third party, although followed by transfer on the books of the company: *Messersmith v. Bank*, 96 Pa. 440; *Pittsburgh R. R. Co. v. Clarke*, 29 Pa. 153. In the case last cited there was indeed an express statutory provision that such transfer should not discharge the subscriber's liability, but the court said, apart from such provision (and construing the Act of 1849, § 7 (P. L. 82), from which the above section is abridged): "The clause which gives to the assignee the advantages, and subjects him to the disadvantages, of a member of the corporation, 'in the same manner as the original subscriber *would have been*,' was intended to fix the extent of the assignee's liability, and not to limit or release that of the assignor. The words '*would have been*,' are, therefore, altogether insuffi-

but no certificate shall be transferred so long as the holder thereof is indebted to said company,¹ unless the board of directors shall consent thereto.²

9. Oath of Officers Holding Elections.³—No person acting as judge or officer holding an election for any such corporation, shall enter on the duties of his office or appointment until he take and subscribe an oath or affirmation before a judge, alderman, justice of the peace or other person qualified by law to administer oaths, that he will discharge the duties of his office or appointment with fidelity, that he will not receive any vote but such as he verily believes to be legal; and if any such judge or officer shall, knowingly and willfully, violate his oath or affirmation, he shall be subject to all the penalties imposed by law upon the officers of the general election of this commonwealth violating their duties, and shall be proceeded against in like manner and with like effect.

cient, in the connection in which they stand, to perform the important office of releasing the original subscriber from his contract.⁴

But whether, upon insolvency of the company, a creditor's bill to collect unpaid and uncalled stock subscriptions can be maintained against an original subscriber after a *bona fide* recorded transfer of his stock, and the original subscriber be compelled to resort to his transferee's implied contract of indemnity does not seem to have been directly decided under this section.

In Bell's Ap., 115 Pa. 93, the court referred to the cases sustaining such liability of the original subscriber as "exceptional instances," and said that "the obligation to make good the unpaid portions of capital stock when the necessities of creditors required it is a charge upon the stock which passes with it to the holders of it. It is an equitable obligation, founded upon no statute, and rests upon those who are the owners of the stock at the time of insolvency," and the court approved the statement in Angell & Ames on Corporations, § 534, that "the liability to pay up installments is shifted from the outgoing to the incoming shareholder." The case itself, however, did not raise the precise question. See, also, West Phila. Canal Co. v. Innes, 3 Wharton, 202; Thompson's Liability of Stockholders, §§ 210-227.

¹ Mount Holly Paper Co.'s Ap., 99 Pa. 513; Waln v. Bank, 8 S. & R. 73. The liability of an original subscriber for an unpaid and uncalled balance of subscription is an indebtedness within this clause: Pittsburgh R. R. Co. v. Clarke, 29 Pa. 146; *In re* Bachman, 12 Bank Reg. 223. But the liability of an officer to his company for fraudulently issuing its stock in excess of the authorized capital is no reason for withholding compensation by the company to third persons who have suffered from the fraud: Willis v. Phila. and Darby R. R. Co., 6 Weekly Notes Cas. 461. There is no common law lien on stock in favor of the corporation for a debt due it by a shareholder: The Steamship Dock Co. v. Heron, 52 Pa. 280; 102 Pa. 492.

² "The proper evidence of their [the directors] assent to a transfer is a recorded resolution adopted when the board was in session. Where the transfer is made by a director it ought further to appear that the resolution of assent was carried without his vote. If the resolution was adopted and entered on the minutes, the loss or destruction of the entry might be supplied by parol proof. But in no other case can parol evidence be received to show that an assignee has been admitted as a member of the corporation in the place of the assignor." Pittsburgh, etc., R. R. v. Clarke, 29 Pa. 152.

³ Act 29 April, 1874, § 8; P. L. 78.

ILLEGAL ELECTION SET ASIDE.¹—And if any election, as aforesaid, be held without the person holding the same having first taken an oath or affirmation, as aforesaid, or be invalid for any other reason, such election shall be set aside in the manner now provided by law, and a new election ordered by the Court of Common Pleas of the proper county, upon the petition of not less than five stockholders supported by proof satisfactory to said court.

10. Cumulative Voting.²—In all elections for directors, managers or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stockholder or other person having a right to vote, may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer, that is to say: If the said member or stockholder or other person having a right to vote, own one share of stock or has one vote, or is entitled to one vote for each of six directors by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit;³ all elections for directors or trustees shall be by ballot;⁴ and every share of stock shall entitle the holder thereof to one vote, in person or by proxy,⁵ to be exercised as provided in this section.

EVIDENCE OF RIGHT TO VOTE.⁶—The certificate of stock and transfer books, or either, of any corporation within this common-

¹ Act 29 April, 1874, § 8; P. L. 78.

² Act 29 April, 1874, § 10, as amended by Act 25 April, 1876; P. L. 47.

³ This section incorporates Art. XVI, § 4, of the Constitution of Pennsylvania, as construed in *Hays v. Com.* 1 Norris, 518; *Com. v. Lintsman*, 6 Pitts. L. J. (N. S.) 122. A stockholder need not give notice of his intention to cumulate his votes: *Pierce v. Com.*, 101 Pa. 150. And where at an election for seven directors, the votes are cumulated and only five candidates, being a legal quorum, receive a plurality of the votes and the next three receive a tie vote, the election is valid for the five directors, who can thereupon organize as a board of directors and the old board cannot hold over: *Wright v. Com.*, 109 Pa. 560.

⁴ A shareholder is entitled to vote upon a question upon which he is personally interested: *Troutwine Co. v. Beatty*, Law Rep., 12 Ap. Cas. 589.

⁵ The right of voting by proxy is not a general right, and the party claiming it, must show a special authority therefor: *Craig v. First Presbyterian Church*, 88 Pa. 47; *Brown v. Commonwealth*, 2 Gr. Cas. 209; *Com. v. Brighturst*, 103 Pa. 134; *Harben v. Phillips*, Law Rep. 23 Ch. Div. 14. Where the charter authorizes voting by proxy at elections for directors and also empowers directors to make by-laws not inconsistent with the laws of the commonwealth, a by-law adopted by the board of directors allowing voting by proxy at all stock elections was held valid: *Wilson v. Academy of Music*, 43 Leg. Int. 86.

By Act 29 April, 1874, § 21 (*infra*, page 43), it is provided that in elections to increase the capital stock, all proxies must have been given within three months preceding such election. The general method of voting proxies is regulated by the Act of 28 March, 1820; 7 Smith's Laws, 320. See Act of 11 June, 1879, P. L. 139 (*infra*, sect. 38, cl. 10), as to voting at meetings of stockholders of turnpike, plank road and bridge companies.

⁶ Act 1 May, 1889; P. L. 102.

wealth, shall be *prima facie* evidence of the right to vote thereon, by the person named therein as the owner, either personally or by proxy. If, however, objection is taken at the time the ballot is tendered, by an actual stockholder, setting out in writing under oath that the stock is not owned absolutely and *bona fide* by the person in whose name it stands in the certificate, or on the transfer books, and who in person or by proxy is in fact offering to vote thereon, it shall be the duty of the judges of election to inquire and determine, summarily, whether the name given in the certificate or standing on the transfer books is that of the absolute and *bona fide* owner thereof, or of a holder of the same as executor, administrator, guardian or as trustee created by last will and testament, or by decree of court. If not, then the vote or votes so tendered shall be rejected.

In cases where by the terms of the preceding section, the person in whose name the stock stands in the certificate or on the transfer books is not permitted to vote, the beneficial owner thereof, including a person who has transferred stock to a trustee as collateral for a loan, reserving in the conveyance the right to vote upon the stock, shall, upon furnishing evidence of ownership satisfactory to the judges of election, be entitled to vote.

11. Capital Stock—Payment of Subscriptions.¹—The capital stock of every such corporation that has or requires a capital stock,

¹ Act 29 April, 1874, § 11, as amended by Act 9 May, 1889; P. L. 180. The capital stock is a trust fund for the payment of the corporate debts, and the liability for unpaid subscriptions cannot be released by the corporation to the prejudice of its creditors: *Lane's Appeal*, 105 Pa. 49; *Upton v. Tribilcock*, 91 U. S. 45; *Bowden v. Santos*, 1 Hughes, 159; and upon the insolvency of the company this liability can be enforced by the creditors upon bill filed, or by an assignee in bankruptcy, although no assessment or call has been made by the corporation, and the certificate upon its face purports to be "non-assessable," and in an action therefor a stockholder will not be allowed to set off individual claims against the company: *Hatch v. Dana*, 101 U. S. 205; *Upton v. Tribilcock*, *ubi supra*; *Wilbur v. The Stockholders*, 13 Phila. Rep. 480; *Long v. Penn. Ins. Co.*, 6 Pa. 422; *Macungie Savings Bank v. Bastian*, 10 Weekly Notes Cas. 71. And it is immaterial that no certificate was ever issued if the subscriber has bound himself to contribute: *Hawley v. Upton*, 102 U. S. 314.

But, "upon the insolvency of a corporation a stockholder is liable for only so much of his unpaid subscription as may be required to pay the creditors." *Citizens Bank v. Gillespie*, 115 Pa. 565. And "If the whole unpaid capital is not required the whole cannot be called. In order to ascertain how much is required there must be an account of debts, assets and unpaid capital taken, and then a decree for an assessment of the amount due by each stockholder." *Lane's Appeal*, 105 Pa. 65; *Bell's Appeal*, 115 Pa. 92. And this assessment can be made by a judge at chambers during vacation: *Citizens' Bank v. Gillespie*, 115 Pa. 564. Where, however, it clearly appears that the entire outstanding unpaid subscriptions are necessary to pay the debts no assessment is necessary: *Yeager v. Scranton Trust Co.*, 14 Weekly Notes Cas. 296. In *Cornell's Appeal*, 114 Pa. 153, certain creditors who had exhausted their remedy at law were permitted to recover a direct money decree against certain stockholders for unpaid stock subscriptions, without taking an account of the other indebtedness of the company and without joining other stockholders in default. The distinction is obvious between these cases, and the liability of an original subscriber when sued upon his contract of subscription as in *Messersmith v. Bank*, 96 Pa. 440; see *Bell's Appeal*, 115 Pa. 92.

A conflict exists between the state and federal decisions as to the effect of an attachment-execution sur judgment issued after the insolvency of the corporation

shall consist of not more than one million dollars,¹ except companies incorporated for the purpose of supplying the public with

to secure unpaid and uncalled stock subscriptions. The state courts deny the force of such attachment-execution: *Lane's Appeal*, 105 Pa. 49; *aliter* in the federal courts: *Re Glen Iron Works*, 41 Leg. Int. 243; 13 Weekly Notes Cas. 387. After assessment, unpaid subscriptions due to the company may be attached by its creditors or be recovered by its voluntary assignee in insolvency: *Peterson v. Sinclair*, 83 Pa. 250; *West Chester R. R. Co. v. Thomas*, 2 Phila. Rep. 344; *German-town Ry. Co. v. Fidler*, 60 Pa. 131; *Macungie Savings Bank v. Bastian*, 10 Weekly Notes Cas. 71.

A delay of six years in prosecuting the work of making calls for payment of stock subscriptions bars an action for such unpaid subscription: *Pittsburgh, etc., R. R. Co. v. Byers*, 32 Pa. 22; *McCully v. R. R. Co.*, *Id.* 25; *Pittsburgh, etc., R. R. v. Graham*, 36 Pa. 77; *Pittsburgh, etc., R. R. v. Plummer*, 37 Pa. 413. In *Allebone v. Hager*, 46 Pa. 54, the principle of these cases was stated to be that "A presumption of abandonment of the project arose in favor of the subscriber;" and under the facts of that case the statute of limitations was held not to be a bar; but in *Shackamaxon Bank v. Dougherty*, 20 Weekly Notes Cas. 297, it was held that a mere delay of six years in making calls barred all recovery, and obviously the bar of the statute was applied when no action was brought for six years after assessment made, or six years after the corporation assigned for the benefit of its creditors: *Franklin Savings Bank v. Bridges*, 20 Weekly Notes Cas. 43.

Many cases upon the subject of stockholders' liability are collected in *Angell & Ames on Corporations*, ch. 15; *Thompson's Liability of Stockholders*, 105 *et seq.* In addition thereto the Pennsylvania and more recent cases tend to preserve the capital intact. It is no defence that the subscription was obtained by fraudulent representations of an agent of the corporation, unless it be part of a scheme of fraud participated in by the company itself: *Custar v. Gas Co.*, 63 Pa. 381; *Upton v. Englehart*, 3 Dillon, 496; nor is the subscription avoided by the grant of additional privileges, although the corporate liabilities are incidentally increased thereby: *Cross v. Railroad Co.*, 9 Norris, 392; *Gray v. Monongahela Co.*, 2 W. & S. 156; nor by beneficial modifications furthering the real object of the undertaking: *Everhart v. Railroad Co.*, 28 Pa. 353; see *Southern Pa. R. R. v. Stevens*, 87 Pa. 190; but the *termini* of a road company form part of the contract: *Manheim Co. v. Arndt*, 31 Pa. 317; *Caley v. Railroad Co.*, 80 Pa. 363; *Moore v. Hanover Junction Co.*, 94 Pa. 324. The charter and franchises cannot be collaterally attacked, and matters of defence to this effect are not admissible in actions for assessments: *Garrett v. Railroad Co.*, 78 Pa. 465; *Hanover Junction Co. v. Haldeman*, 82 Pa. 37; *Chubb v. Upton*, 95 U. S. 655; *Sparks v. Humes Bank*, 94 Pa. 429; *Freeland v. Penna. Central Ins. Co.*, 94 Pa. 504; *Weinman v. Wilkinsburg, etc., R. R. Co.*, 118 Pa. 192: *supra*, p. 21, n. 1. Evidence of ratification and participation in corporate affairs will, of course, be admissible to estop a subscriber from denying an otherwise invalid subscription: *Philada., etc., R. R. Co. v. Cowell*, 28 Pa. 329; *McCully v. Railroad Co.*, 32 Pa. 25; *Hays v. Railroad Co.*, 38 Pa. 81; *Craig v. Normal School*, 72 Pa. 46; *Commonwealth v. Insurance Co.*, 11 Phila. Rep. 550; but a voluntary payment of one assessment does not imply a promise to pay subsequent calls: *Franks Oil Co. v. McCleary*, 63 Pa. 317; *Pittsburgh Coal Co. v. Otterson*, 4 Weekly Notes, 545. So it is no defence that an original subscriber has not paid the percentage required to be certified prior to obtaining the charter: *Garrett v. Railroad Co.*, 78 Pa. 465; see *Commonwealth v. Railroad Co.*, 3 Grant's Cases, 200; and see also concurring opinion, *Boucher v. Railroad Co.*, 78 Pa. 306; and an attempted release of certain subscribers by the board of directors is an act in excess of their corporate authority and ineffectual: *Bedford Railroad Co. v. Bowser*, 48 Pa. 30. Private conditions annexed to subscriptions made prior to incorporation are invalid, and the subscription will be absolute: *Bavington v. Railroad Co.*, 34 Pa. 358; *Nippenose Co. v. Staddon*, 68 Pa. 256; *Boyd v. Railroad Co.*, 90 Pa. 169; *aliter* of conditional subscriptions after incorporation: *Phila. R. R. Co. v. Hickman*, 28 Pa. 318; *Caley v. Railroad Co.*, 80 Pa. 363; *Hanover Junction Co. v. Haldeman*, 82 Pa. 37; *McCarty v. Railroad Co.*, 87 Pa. 332; unless constructively fraudulent as to other stockholders: *Miller v. Railroad Co.*, 87 Pa. 95.

¹ Five million dollars in companies incorporated for
Supplying light, heat or fuel [as to water companies, see *infra* that title, sect. 41].

water, whose capital stock shall not exceed two million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid¹ in such instalments and at such times as the directors may require,² and if default be made in any payment the person or persons in default³ shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with the penalty of one half of one per centum per month, as aforesaid,⁴ or the directors may cause the stock to be sold in the manner provided in clause two of section thirty-nine of this act.⁵

RIGHT TO VOTE.⁶—And no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting.⁷

Manufacturing, mining, mechanical, quarrying, etc.

Metal and wood companies.

Traction motor and cable companies.

Ship building and ship transportation companies.

Two million dollars in title insurance and trust companies.

Six hundred thousand dollars in real estate companies.

See special provisions under these titles, *infra*.

¹ Payment by note is prohibited, *infra*, p. 35.

² Under the Act of 13 June, 1883, § 5 (*infra*, p. 46) one-fourth of the capital must be paid in within two years after incorporation.

³ The effect of this provision coupled with the provisions of section 7 (*supra*, p. 29), "is to make the assignee of the stock of a company incorporated under this act personally liable at least for unpaid assessments made during the time in which he is the owner of the stock." *Reimer Harrow Co. v. Rosenberger*, 40 Leg. Int. 382; *West Phila. Canal Co. v. Innes*, 3 Wharton, 198; *Wilston v. Upton*, 91 U.S. 65. And this without regard to the nature of the ownership of the registered owner: *Pullman v. Upton*, 96 U.S. 328; *Germania Bank v. Case*, 10 Pitts. Leg. Jour. [N. S.] 127; *Long v. Penn Ins. Co.*, 6 Pa. 421; and, moreover, a merely nominal transfer for the purpose of escaping liability will not relieve the transferor: *Germania Bank v. Case*, *ubi supra*.

⁴ The manner of serving process to enforce this liability is regulated by the Act of 14 May, 1874; P. L. 146, quoted *infra* p. 39. It is not necessary to prove the formal organization of the company although averred in the declaration: *Grubb v. Mahoning Nav. Co.*, 2 Harris, 302; and averring that the calls were duly made is a sufficient averment that they were made in conformity with the Act of Assembly: *Bavington v. Pittsburgh, etc., Railroad Co.*, 10 Casey, 363.

⁵ "The remedies are twofold, by suit or forfeiture, at the discretion of the directors." *Richboro Dairymen's Association v. Ryan*, 16 Weekly Notes Cas. 383; 42 Leg. Int. 268.

⁶ Act 29 April, 1874, § 11; P. L. 79.

⁷ And by section 21 of Act of 29 April 1874 [*infra*, p. 42, 43], in all elections to increase the capital stock no share transferred within sixty days is entitled to vote, and all proxies must bear date and have been executed within three months prior to such election.

TRANSFER OF SHARES.¹—The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe;² but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government.

³ The stock of every corporation created under the provisions of this statute shall be deemed personal property. And no shares shall be transferable until all previous calls thereon shall have been fully paid in or shall have been declared forfeited for the non-payment of calls thereon.⁴

PAYMENT BY NOTE PROHIBITED.—No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock.⁵

12. Stock of other Corporations.⁶—And it shall not be lawful for any such corporation to use any of its funds in the purchase of any stock in any other corporation,⁷ or to hold the same, except as collateral security for a prior indebtedness, except as provided in section thirty-seven of this act.⁸

¹ Act 29 April, 1874, § 11; P. L. 79.

² *Supra*, p. 29; Act 29 April, 1874, § 7. A corporation being a trustee for stockholders is bound to proper vigilance to prevent unauthorized transfers: *Telegraph Co. v. Davenport*, 97 U. S. 369; and permitting, without inquiry, a transfer under a power of attorney thirteen years old is not such proper vigilance: *Pennsylvania R. Co.'s Appeal*, 86 Pa. 80. A purchaser cannot by mandamus compel the corporation to register the transfer to himself: *Birmingham Fire Ins. Co. v. Commonwealth*, 92 Pa. 72; the appropriate remedy being an action in the case wherein the measure of damages is the value at the time of refusal to transfer: *German Building Ass'n v. Sendmeyer*, 14 Wright, 67; *Waln v. Bank*, 8 S. & R. 73; *Presbyterian Church v. Bank*, 5 Pa. 345.

³ Act 29 April, 1874, § 12; P. L. 79, as amended by Act 25 May, 1887; P. L. 273.

⁴ Nor (under Act 29 April, 1874, § 7), while the holder is indebted to the company, unless the board of directors consent thereto: *supra*, p. 30.

This section of the Act of 1874 originally contained a provision empowering the corporation to assess upon each share an amount not exceeding the par value of such share: *Price's Ap.*, 106 Pa. 421; but this power was abolished by the amending Act of 25 May, 1887; P. L. 273.

⁵ *Boyd v. Railroad Co.*, 90 Pa. 169; *McComb v. Credit Mobilier*, 5 Weekly Notes, 80; *Bailey v. Gas Co.*, 19 Pitts. Leg. Jour. 73. Upon payment of all instalments the stockholder is entitled to a certificate: *Johnson v. Railroad Co.*, 40 How. Pr. 193.

⁶ Act 29 April, 1874, § 12; P. L. 39.

⁷ A note given in payment for such stock is valid in the hands of *bona fide* purchasers without notice: *Wright v. Antwerp Pipe Co.*, 101 Pa. 204.

⁸ The exception relates solely to building and loan associations: *infra*, sect. 44. By Act 29 April, 1874, § 38, clause 6, it is provided that any corporation may subscribe to, take or purchase the bonds or stock of any companies formed for the manufacture of iron, steel or other metal, or articles of commerce from wood or metal, or may guarantee the payment of such bonds: *infra*, sect. 45, cl. 6. So by Act of 1876 (*infra*, § 47) as to stock and bonds of inclined plane railways.

13. Power to Mortgage.¹—It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders,² upon their real estate and machinery,³ or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding six per centum :⁴ *Provided*, That it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine and eleven of corporations for profit,⁵ of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the Act of Assembly approved April seventeenth, one thousand eight hundred and seventy-six,⁶ so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations, or is contained in the charter of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed and managed.⁷

EQUITY JURISDICTION IN CERTAIN MORTGAGES.⁸—Each of the several Courts of Common Pleas of this commonwealth shall have and exercise all the powers of a court of chancery, in all cases of or for enforcing rights under mortgages of the property or franchises of any coal, iron, steel, lumber or oil, or any mining, manufacturing or transportation corporation, where such property or franchises, or

¹ Act 29 April, 1874, § 13, as amended by Act 21 May, 1889 ; P. L. 257.

² The invalidity of the mortgage does not affect the liability on the bonds : *Phila. R. R. Co. v. Lewis*, 33 Pa. 33.

³ *Roberts' Appeal*, 60 Pa. 400 ; *Phila., etc., R. R. Co. v. Woelpper*, 64 Pa. 366.

⁴ When not otherwise provided by statute, a mortgage signed and acknowledged by a majority of the board of directors, and sealed with the corporate seal, is sufficiently executed : *Gordon v. Preston*, 1 Watts, 385. The Act of 8 June, 1881, P. L. 69 (*supra*, p. 8, n.), provides that a copy of the minutes may in certain cases be evidence in proceedings relating to property mortgaged or transferred.

⁵ *Viz.*: Road, Bridge, Telegraph, Ferry, Water, Light, Heat and Power Companies.

⁶ Inclined Plane Companies.

⁷ Special statutes relate to mortgages by gas and water companies : Act 24 March, 1877 ; P. L. 39 ; quoted *infra*, sect. 41, cl. 3.

By exhibition companies : Act 17 April, 1878 ; P. L. 22.

⁸ Act 23 March, 1877, § 1 ; P. L. 32.

any part thereof, shall be situate or exercisable within the limits of this commonwealth, and belong to or be exercisable by any domestic corporation or any foreign corporation under permission granted by the laws of this commonwealth.

¹ When the corporation shall have either voluntarily appeared to any suit brought under or covered by this act, or shall have been duly served with process, the court in which such suit is or shall be pending shall have jurisdiction of the subject-matter, irrespective of the local situation in this state of the mortgaged premises; and its process to enforce any interlocutory or final order or decree made by such courts, in relation to the preservation, custody, sale or other disposition of the mortgaged premises, may be executed within any county of the state: *Provided*, That where such mortgage shall have been given by a corporation having a corporate existence in this state only, the proceedings upon the said mortgage shall be had either in the county within which the principal office of the said company is located or in the county in which all or part of the mortgaged premises is situated.

14. Liability of Stockholders.²—The stockholders in each of said corporations shall be liable, in their individual capacity, to the amount of stock held by each of them,³ for all work or labor done⁴ to carry on the operations of each of said corporations;⁵ but this section shall not be construed to increase or diminish the liability of stockholders in corporations which, by the terms of this statute, are to be governed, controlled and managed by the provisions of other statutes, but their liability shall be fixed and defined by the terms of the statutes by which said corporations are to be governed, controlled and managed.⁶

¹ Act 23 March, 1877, § 2, as amended by the Act of 24 June, 1885; P. L. 151.

² Act 29 April, 1874, § 14, as amended by Act 17 April, 1876, § 3; P. L. 32.

³ "The liability created by this section exists to the amount of the stock held by the stockholders without any reference to the question whether it has been paid for or not;" Lane's Ap., 105 Pa. 57; Patterson v. Wyomissing Co., 40 Pa. 117; and is entirely apart from the liability of the stockholders for unpaid subscriptions to capital stock (Lane's Ap., 105 Pa. 49), and also apart from the liability of the officers and directors under Act 29 April, 1874, § 39, cl. 5, 6, and 9 [*infra*, sect. 46]; Hill v. Frazier, 22 Pa. 320.

⁴ The Act of 1874 provided that stockholders should be liable for all work or labor done "or materials furnished;" but the amendment of 1876 omitted the latter words. For classes embraced within the terms "workmen and laborers," see *infra*, sect. 46, cl. 11, n.

⁵ Statutes imposing individual liability for corporate debts, being in derogation of the common law, are strictly construed: O'Reilly v. Bard, 105 Pa. 569; Moyer v. Slate Co., 71 Pa. 293; Mean's Appeal, 85 Pa. 75; Weigley v. Coal Co., 5 Phila. Rep. 67. [Many cases upon this liability will be found in Thompson's Liability of Stockholders, § 25, 103].

⁶ For the individual liability of stockholders in mining, manufacturing and other

ACTION TO ENFORCE LIABILITIES.¹—In any action or bill in equity² brought to enforce any liability under the provisions of this act, the plaintiff may include as defendants, any one or more of the stockholders of such corporation, claimed to be liable therefor; and if judgment be given in favor of the plaintiff for his claim, or any part thereof, and any one or more of the stockholders so made defendants, shall be found to be liable, judgment shall be given against him or them.³

EXECUTION.⁴—The execution upon such judgment shall be first levied on the property of such corporation, if to be found in the county where the chief business of the corporation is carried on, and in case such property, sufficient to satisfy the same, cannot be found in said county, the deficiency, or so much thereof as the stockholder or stockholders, defendants, in such judgment, shall be liable to pay, shall be collected of the property of such stockholder or stockholders;⁵ on the payment of any judgment as aforesaid, or any part thereof, by one or more stockholders, the stockholder or stockholders so paying the same shall be entitled to have such judgment, or so much thereof as may have been paid by him or them, assigned to him or them for his or their benefit, with power to enforce the same in manner aforesaid, first against the company, and in case the amount so paid by him or them shall not be collected of the property of the corporation, then ratably against the other solvent stockhold-

corporations embraced within Art. XVIII of "Corporations of the Second Class," (*supra*, p. 12), see *infra*, sect. 46, cl. 11 and n.

For the individual liability of stockholders in corporations for the manufacture of iron, steel, metal, or of articles of commerce from metal or wood, see *infra*, sect. 45, cl. 8.

¹ Act 29 April, 1874, § 15; P. L. 80.

² As the individual liability of stockholders is created solely by statute, and does not exist at common law (*supra*, p. 37, n. 5), the statute which creates it may provide the exclusive manner of its enforcement: *Lane's Ap.*, 105 Pa. 58; *Pollard v. Bailey*, 20 Wallace, 520, 526; *Brinham v. Coal Co.*, 47 Pa. 43; *Youghiogheny Co. v. Evans*, 72 Pa. 331. And where the stockholders defendant are also creditors, a bill in equity is the more appropriate remedy: *Mathez v. Neidig*, 72 N. Y. 100.

³ To enforce this liability, the stockholders, or a portion of them, must be joined in the action against the corporation: *Hoard v. Wilcox*, 47 Pa. 51; s. c. 52 Pa. 377; *Wood v. Simons*, 110 Mass. 116; and the plaintiff may recover against those proved to be stockholders, notwithstanding that others not liable may have been joined as defendants: *McHose v. Wheeler*, 45 Pa. 32. The charter is *prima facie* evidence that the persons named therein were members, and the defendants cannot avoid responsibility by reason of irregularities in the organization: *McHose v. Wheeler*, 45 Pa. 32; *Patterson v. Wyomissing Co.*, 40 Id. 117.

⁴ Act 29 April, 1874, § 15; P. L. 80.

⁵ The liability of stockholders is secondary and cannot be enforced until the assets of the primary debtor—the corporation—are exhausted: *Patterson v. Wyomissing Co.*, 40 Pa. 117; *Mansfield Iron Co. v. Willcox*, 52 Pa. 377; *Mean's Appeal*, 85 Pa. 75; and hence this collateral liability, which is that of a guarantor rather than a surety, does not debar a stockholder who is also a creditor of the corporation from participating in the distribution of the corporate assets: *Schlaudecker's Ap.*, 22 Weekly Notes Cas. 37.

ers, if any such there be, originally liable for the claim on which such judgment was obtained.¹

LIMITATION OF LIABILITY.²—But no stockholder shall be personally liable for payment of any debt contracted by any such corporation, unless suit for the collection of the same shall be brought against such stockholder or stockholders within six months after such debt shall have become due.

³The officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporation otherwise than in this [act] provided.

SERVICE OF PROCESS TO ENFORCE LIABILITY.⁴—In all actions or proceedings now or hereafter brought or instituted in any county within this commonwealth, to charge the stockholders of any corporation with any of the debts of such corporation, or to enforce payment of instalments due upon stock, service of summons or other process, may be made upon the stockholders resident within such county in the same manner as writs of summons are now directed to be served, and upon those residing in other counties of this commonwealth by the sheriff of the county in which they may respectively reside, and upon those non-residents of this commonwealth by publication for four successive publications in a newspaper published within the county where such action or proceeding is brought or instituted, and also in the state in which such non-residents may reside, as the court from which such action or proceedings shall issue may direct, and a copy of such publication shall be mailed to the post office address of such non-resident stockholders, if such address can be ascertained.

15. Preferred Stock.⁵—Every corporation created under the provisions of this act, or accepting its provisions, may, with the consent of a majority in interest of its stockholders, obtaining [obtained] at a meeting to be called for that purpose, of which public notice shall be given during thirty days in a newspaper of the proper county, issue preferred stock of the corporation, the holders of which preferred stock shall be entitled to receive such dividends thereon as

¹This provision was taken from the Act of 7 April, 1849, P. L. 568, which was construed in *Brinham v. Coal Co.*, 47 Pa. 43, and *O'Reilly v. Bard*, 105 Pa. 569, wherein it was held that upon payment of the judgment by a stockholder his sole remedy by contribution was against his co-defendants therein, and not against other stockholders not parties to said judgment.

²Act 29 April, 1874, § 15; P. L. 80.

³Act 29 April, 1874, § 24; P. L. 83.

⁴Act 14 May, 1874; P. L. 146.

⁵Act 29 April 1874, § 16; P. L. 81.

the board of directors of the corporation may prescribe, payable only out of the net earnings of the corporation.¹

16. Property may be taken for Stock.²—Every corporation created under the provisions of this act or accepting its provisions, may take such real and personal estate, mineral rights, patent rights and other property, as is necessary for the purposes of its organizations and business,³ and issue stock to the amount of the value thereof, in payment thereof, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments,⁴ and in the charter and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company,⁵ but shall be stated or certified in this respect according to the fact;⁶ and the executors or administrators of any deceased tenant in common of lands, mines and mineral rights so proposed to be taken may, and they are hereby authorized, to convey the individual estate and interest of such decedent therein to such company, receiving therefor so much stock in such company as the said decedent would have been entitled to receive in his lifetime, to be held in the same manner as the lands: *Provided*, That no directions or limitations contained in any last will and testament of such decedent shall be in any manner interfered with: *And provided*, That before making such conveyance, such executors or administrators shall give sufficient security, to be approved by the Orphans' Court having jurisdiction of their accounts, for the faithful application of the stock received thereof.

17. Fictitious Increase Prohibited.⁷—No such corporation shall issue either bonds or stock except for money, labor done or money or property actually received, and all fictitious increase of stock or indebtedness in any form shall be void.⁸

¹ West Chester R. R. Co. v. Jackson, 77 Pa. 321.

² Act 29 April, 1874, § 17, as amended by Act 17 April, 1876, § 4; P. L. 32.

³ A corporation cannot issue full paid stock for bonds: *In re Corporation Bonds*, O. A. G., 2 Chester Co. Rep. 183.

⁴ This does not authorize a provision in the charter of a *future* purpose to take property and issue stock therefor: *Re Glenwood Co.*, O. A. G., 6 Pa. C. Ct. Rep. 575.

⁵ See *Roberts v. Crystal Springs Co.*, 1 Chester Co. Rep. 439.

⁶ And in addition the certificate must, under § 3, state that ten per cent. of the capital stock has been paid in cash: O. A. G., 26 April, 1876; *Id.* 23 June, 1876, *supra*, p. 19.

⁷ Act 29 April, 1874, § 17, as amended by Act 17 April, 1876, § 4; P. L. 32.

⁸ Constitution of Pennsylvania, Art. XVI, Sect. 7.

18. Deferred Stock.¹—Every such corporation may provide for the issue of deferred stock in payment for such real or personal estate or mineral rights, and if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or in the acceptance of this statute, to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payments of dividends thereon, until out of the net earnings at least five per centum has been declared and paid upon the other full paid stock of the corporation.

19. Increase of Capital Stock or Indebtedness.²—The capital stock or indebtedness³ of any corporation to be created under the provisions of this statute or accepting its provisions, may be increased, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company,⁴ to such amount as such corporation is by this act authorized to increase its capital stock or indebtedness,⁵ but such increase shall only be made for money, labor done, or money or property actually received.⁶

MEETING OF STOCKHOLDERS THEREFOR.⁷—Any such corporation desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this commonwealth; and

¹ Act 29 April, 1874, § 17, as amended by Act 17 April, 1876, § 4; P. L. 32.

² Act 29 April, 1874, § 18; P. L. 81; Constitution of Pennsylvania, Art. XVI, Sect. 7. The corporation cannot create a fixed indebtedness by its charter: *Re Hempfield Coal Co.*, O. A. G., 2 Chester Co. Rep. 181.

³ A mortgage to secure an existing debt is not an increase of indebtedness: *Ahl v. Rhoads*, 84 Pa. 319.

⁴ The board of directors have no such power: *Railway Co. v. Allerton*, 18 Wallace, 233; *Eidman v. Bowman*, 58 Ill. 444; *Cass v. Iron and Steel Co.*, 9 Fed. Rep. 640.

⁵ The right to issue the stock is a franchise held by the corporation in trust for all the corporators, and cannot be disposed of unequally: *Montgomery Bank v. Reese*, 26 Pa. 143; 31 Pa. 78; *Scott v. Curry*, 54 Pa. 270; *Gray v. Portland Bank*, 3 Mass. 365.

⁶ The constitution provides [Art. XVI, § 7:] "No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, first obtained at a meeting to be held after sixty days' notice given in pursuance of law." Bonds which show upon their face that they were issued in violation of this provision are void: *Maas v. Penna.*, etc., R. R. Co., 1 Monaghan, 497.

⁷ Act 29 April, 1874, § 19; P. L. 82.

notice of the time, place and object of said meeting, shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.¹

ELECTION TO INCREASE CAPITAL OR INDEBTEDNESS.²—At the meeting called, pursuant to the nineteenth section of this act, an election of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation, before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such election to the best of their ability ;³ and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase, or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company.

VOTING THEREON.⁴—Each ballot shall have indorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the person holding a proxy therefor ; but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting,⁵ nor shall any proxy be

¹ This preliminary notice can be waived by the unanimous consent of all the stockholders and their consent can be evidenced by their signatures to the proceedings: *Re Bellefonte, etc., R. R. Co., O. A. G.*, 2 Chester Co. Rep., 128 [the decision was under the Act of April 18, 1874], and if the stockholders have knowledge of the intention to increase the stock the failure to give this statutory notice cannot be taken advantage by one not injured by such want of notice: *Columbia Bank's Ap.*, 16 Weekly Notes Cas. 357 ; 42 Leg. Int. 226.

Under instructions of the Secretary of the Commonwealth, issued December 12, 1888, "Waivers of notice of publication should be accompanied by the affidavit of the proper officer, showing that the persons subscribing the waiver are the owners of all the capital stock of the corporation."

² Act 29 April, 1874, § 20 ; P. L. 82.

³ See *supra*, p. 30, as to oath of officer holding election.

⁴ Act 29 April, 1874, § 21 ; P. L. 82.

⁵ And under section 11 of the Act of 1874 [*supra*, p. 34], "no stockholder shall be entitled to vote at any election or at any meeting of stockholders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting."

received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed, that the same is true and correct to the best of his knowledge and belief.

RETURN OF ELECTION THEREOF.¹—It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the twentieth section of this act, with a copy of the resolution and notice calling same thereto annexed;² and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such increase and terms of the same, that is to say, the terms on which additional stock is issued;³ and in case of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer, as accounts for taxes due the commonwealth are settled and collected; and the secretary of the commonwealth shall cause said returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the auditor general, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return as aforesaid.⁴

¹ Act 29 April, 1874, § 22; P. L. 83.

² Under instructions of the Secretary of the Commonwealth, issued December 12, 1888, it is provided: "Returns of election upon increase or decrease of capital stock should not be combined with the returns of election upon increase or decrease of indebtedness. The return of the president or treasurer as to the actual making of the authorized increase or decrease should be made separately from the election return and not attached thereto, and is required by law to be made within thirty days after the actual increase or decrease.

"In case of increase the return should specify the terms thereof, whether for cash, for materials, labor or property.

"Waivers of notice of publication should be accompanied by the affidavit of the proper officer, showing that the persons subscribing the waiver are the owners of all the capital stock of the corporation."

³ Unpaid subscriptions to additional stock constitute such increase: O. A. G., 4 December, 1874. The fees of the secretary of the commonwealth upon such return are twenty-five dollars, under Act of 28 March, 1873 [P. L. 53]: *Re Alliance Coal Mining Co.*, O. A. G., 19 July, 1877. A bonus of one-quarter of one per cent. upon the authorized increase must be paid to the state treasurer: Act 7 January, 1889; P. L. 115.

⁴ The holders of the increased stock have no standing to question the regularity of

REDUCTION OF CAPITAL STOCK.¹—Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this commonwealth,² may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act.³

20. May Sell Franchises and Property.⁴—It shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid.

21. Construction of Grant of Power—Future Modification of Act.⁵—The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same.⁶

the proceedings whereby the increase is made: *Columbia Bank's Ap.*, 16 Weekly Notes Cas. 357; 42 Leg. Int. 226.

¹ Act 29 April, 1874, § 23, as amended by Act 17 April, 1876, § 5; P. L. 33.

² But such corporation must first accept the provisions of the constitution and of this act: O. A. G., 21 August, 1877.

³ *Supra*, p. 41–43. These regulations must be strictly pursued, any departure therefrom rendering the reduction invalid: O. A. G., 20 August, 1877.

⁴ Act 29 April, 1874, § 23, as amended by Act 17 April 1876, § 5; P. L. 33.

⁵ Act 29 April, 1874, § 25; P. L. 83.

⁶ Such franchises may, however, be taken by the exercise of the right of eminent domain under the constitution of Pennsylvania, Art. XVI, § 3, which provides: "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state."

"A franchise is property, and as such may be taken by a corporation having the right of eminent domain, but in favor of such right there can be no implication unless it arises from a necessity so absolute that without it the grant itself

22. When Work to be Commenced and Completed.¹—If any company incorporated under this act, or any of its supplements, shall not proceed in good faith to carry on its work and construct or acquire its necessary buildings, structures, property or improvements within the space of two years from the date of its letters-patent, and shall not within the space of five years thereafter complete the same, the rights and privileges thereby granted to said corporation shall revert to the commonwealth: *Provided, however,* That it shall be lawful for any such corporation who shall have proceeded in good faith as aforesaid, at any time before the expiration of the said period of five years, or of any extension thereof, to apply to the Court of Common Pleas in and for the county in which said corporation shall have its principal office for an extension of such time as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting out the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company at a meeting called for that purpose, a duly certified copy of which resolution shall be annexed to said petition. Thereupon it shall be the duty of such court to set down said petition for hearing before it upon some day to be fixed by said court, and to direct that notice of said petition shall be given by publication or otherwise as the court shall direct. Upon the day so fixed, or upon such subsequent day or days as the matter may be adjourned to, said court shall proceed to a hearing of said petition, and it being made to appear to said court that the order of notice herein provided for has been complied with, said court may, by order, adjudge and direct that the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended for a period not exceeding five years beyond the time fixed by law for the completion thereof, and thereupon, upon filing a duly certified copy of such order in the office of the secretary of the commonwealth, the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended as provided in such order: *Provided further,* That when said buildings, structures, property or improvements are wholly within one county, said application shall be made to the Court of Common Pleas in and for said county.

will be defeated. It must also be a necessity that arises from the very nature of things over which the corporation has no control; it must not be a necessity created by the company itself for its own convenience or for the sake of economy: Penna. R. R. Co's Ap., 93 Pa. 150.

¹ Act 17 April, 1876, § 11, as amended by Act 16 May, 1889, § 2; P. L. 242.

² Individual action to complete this forfeiture is not necessary, and the commonwealth can, therefore, re-grant these privileges to another company: *Com. v. Lykens Water Co.*, 110 Pa. 391.

23. Time Limit for Organization and Payment of Capital Stock¹—Any corporation of the second class, created under the provisions of the act to which this is a supplement, or any of its supplements, that shall not within two years from the date of its letters-patent proceed in good faith to organize and to do the things contemplated by its charter, and have paid up at least one-fourth of its capital stock, shall be held and deemed to have forfeited its charter, and the attorney general shall, on the application of any citizen, take the proper legal steps to forfeit and vacate its said charter, but any corporation now in existence shall have two years from the date of this act to do and perform the things by this section required.

24. Return to Auditor General.²—Hereafter no limited partnership, bank, joint stock association, corporation or company whatsoever, formed, erected, incorporated or organized by or under any law of this commonwealth, general or special, or formed, erected, incorporated or organized under the laws of any other state, and doing business in this commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the Act of Assembly or authority under which formed, incorporated or organized, the place of business, the post-office address, the names of the president, chairman, secretary and treasurer, or cashier, and the amount of capital authorized by its charter, and the amount of capital paid into the treasury, registered in the office of the auditor general, and every limited partnership, bank, association, joint stock association, company or corporation whatsoever, now engaged in business in this commonwealth, shall, within ninety days after the passage of this act, register as herein required in the office of the auditor general. All the corporations, companies, associations, and limited partnerships aforesaid, shall annually hereafter notify the auditor general of any change in their officers, and any such institution or company which shall neglect or refuse to comply with the provisions of this section shall be subject to a penalty of \$500, which penalty shall be collected on an account settled by the auditor general and state treasurer in the same manner as taxes on capital stock are settled and collected.

25. Annual Reports.³—Hereafter, except in the case of banks, savings institutions and foreign insurance companies, it shall be the

¹ Act 13 June, 1883, § 5; P. L. 123.

² Act 1 June, 1889, § 19; P. L. 427: This statute includes all corporations (except building and loan associations), whether for profit or otherwise: *Re St. Luke's M. E. Church*, 41 Leg. Int. 74; see *In re First Presbyterian Church*, 107 Pa. 546; 111 Pa. 163.

³ Act 1 June, 1889, § 20; P. L. 428.

duty of the president, chairman or treasurer of every corporation, joint stock association and limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this commonwealth, and of every corporation, joint stock association and limited partnership whatsoever, now or hereafter incorporated or organized by or under the laws of any other state or territory of the United States, or by the United States, or by any foreign government, and doing business in and liable to taxation within this commonwealth, or having capital or property employed or used in this commonwealth, by or in the name of any limited partnership, joint stock association, company or corporation whatsoever, association or associations, co-partnership or co-partnerships, person or persons, or in any other manner, to make a report in writing to the auditor general annually in the month of November, stating specifically:

1. Total authorized capital stock.
2. Total authorized number of shares of stock.
3. Number of shares of stock issued.
4. Par value of each share.
5. Amount paid into the treasury on each share.
6. Amount of capital paid in.
7. Amount of capital upon which dividend was declared.
8. Date of each dividend declared during said year ended with the first Monday in November.
9. Rate per centum of each dividend declared.
10. Amount of each dividend during the year ended with the first Monday in said month.
11. Gross earnings during said year.
12. Net earnings during said year.
13. Amount of surplus.
14. Amount of profit added to sinking fund during said year.
15. Highest price of sales of stock between the 1st and 15th days of November aforesaid.
16. Highest price of sales of stock during the year aforesaid.
17. Average price of sales of stock during the year.

And in all cases where any such corporation, joint stock association or limited partnership, shall fail to make any dividend upon either its common or preferred stock during the year ended as aforesaid, or in case the dividend or dividends made or declared on either common or preferred stock during said year shall amount to less than six per centum upon the par value of said stock, any two of the following named officers thereof, namely, the president, chairman, treasurer and secretary, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of their knowledge and belief, shall, between the 1st and 15th days of November of each year in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of the said common or pre-

ferred stock, estimate and appraise the capital stock upon which no dividend has been made or declared, or upon the par value of which the dividend or dividends made or declared amounted to less than six per centum, at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price or value as indicated or measured by the amount of the dividends made or declared, and when the same shall have been so truly estimated and appraised they shall forthwith forward to the auditor general a certificate thereof accompanied by a copy of their said oath or affirmation, signed by them and attested by the magistrate or other person duly qualified to administer the same. *Provided*, That if the auditor general and state treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof based upon the facts contained in the report herein required, or upon any information within their possession, or that shall come into their possession, and to settle an account on the valuation so made by them, for taxes, penalties and interest due the commonwealth thereon, and any corporation, joint stock association or limited partnership dissatisfied with such settlement, may appeal therefrom in the manner now provided by law for appeals from settlements of accounts by the auditor general and state treasurer.

26. Acceptance of Act by Existing Corporations.¹—Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this commonwealth,² shall be entitled to all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the secretary of the commonwealth a certificate of a single corporation, or a joint certificate if two or more corporations incorporated for and doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the constitution and of this act, duly authorized by a meeting of stockholders called for that purpose;³ and upon such acceptance and approval by the governor, he shall issue letters-patent to said corporation, or if two or more corporations, to said corporations as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount and capital, number of shares and par value thereof, as shall be designated by said corpora-

¹ Act 29 April, 1874, § 26, as amended by Act of 17 April, 1876, § 6; P. L. 33.

² This does not include corporations of the first class; they are covered by Act 29 April, 1874, § 42 [*infra*, § 30]; *Re Women's Christian Association*, O. A. G., 20 November, 1876, 2 Chester Co. Rep. 79.

³ Publication is not required: O. A. G., 18 April, 1876.

tion or corporations in said certificate ;¹ *Provided*, That where two or more corporations shall make a joint certificate as aforesaid, and letters-patent shall be issued to said new corporation said corporations shall thenceforth be deemed, held and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act.

27. Re-Chartering Existing Corporations.²—Corporations created by or under the laws of this state, embraced within either of the classes named in section two of this act, the charters whereof are about to expire by lapse of time from their own limitation, may be re-chartered, or the charters thereof renewed, under the provisions of this act, by preparing, having approved and recorded the certificate named in said section for the class of corporation of which the same is one, in addition to the requirements provided in this act for a new corporation;³ the certificate for a re-charter shall state the fact that it is a renewal of the former charter, naming the corporation and the date of its first charter. It shall also be accompanied with a certificate, under the seal of the corporation, showing the consent of at least a majority in interest of such corporation to such re-charter. It shall also state the financial condition of the said corporation at the date of such certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property, and cash assets, if any. It shall expressly accept the provisions of the constitution of this state and of this act, and expressly surrender all privileges conferred upon such corporation by its original charter that are not enjoyed by corporations of its class under this act or general laws of this commonwealth.⁴

EFFECT OF RE-CHARTER.⁵—From the date of recording of such certificate, if the corporation be of the first-class named in section two of this act, and from the date of letters-patent, if of the second class, the said re-chartered corporation shall be and exist as a new corporation under the provisions of this act and of its said renewed charter; and all of the rights, privileges, powers, immunities, lands, property and assets, of whatever kind or character the same may be, possessed

¹ When corporations existing prior to the Act of 1874, and accepting its provisions, have paid a bonus upon their capital stock, they are not required to pay an additional bonus under Act 29 April, 1874, § 44 [*infra*, § 32]; O. A. G., 9 November, 1874; *aliter* as to corporations seeking a re-charter under section 40 of Act of 29 April, 1874; O. A. G., 4 March, 1879.

² Act 29 April, 1874, § 40; P. L. 103.

³ Notice must be given by advertisement as in the case of original applications, *supra*, p. 17; *Re* Port Triverton, etc., Ferry Co.; O. A. G., 8 January, 1876.

⁴ Such re-chartered corporation must pay the bonus required by Act 29 April, 1874, § 44 [*infra*, § 32]; O. A. G., 4 March, 1879.

⁵ Act 29 April, 1874, § 40; P. L. 103.

and owned by the said original corporation, shall vest in and be owned and enjoyed by the said re-chartered corporation, as fully and with like effect as if its original charter had not expired, save as herein and by said certificate expressly stated otherwise; and all suits, claims and demands by said corporations in existence at the date of such re-charter, shall and may be sued, prosecuted and collected, under the laws governing the said corporation prior to its re-charter, and all claims and demands of every nature and character in existence at said re-charter, may be collected from and off the said re-chartered corporation, as fully and with like effect as if no change had taken place.

28. Eminent Domain—Assessment of Damages—Petition.¹—In all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property, materials or franchises for the public purposes thereof,² and the said corporation cannot agree with the owner or owners of any such waters, streams, lands, materials or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, land or materials, which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the Court of Common Pleas of the proper county, on application thereto, by petition,³ either by said corporation or by the owner or owners⁴ or any one in behalf of either, shall appoint

¹ Act 29 April, 1874, § 41; P. L. 104. This section is substantially taken from Act of 19 February, 1849, § 11; P. L. 84.

The constitution provides [Art. XVI, § 8], "Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction." Penna. R. R. v. Duncan, 111 Pa. 352; Phila. & Reading R. R. v. Patent, 17 Weekly Notes Cas. 199. Entry prior to such compensation or security is tortious: Western Pa. R. R. v. Johnston, 59 Pa. 290; McClinton v. R. R., 66 Id. 404; Phila., Newtown, etc., R. R. v. Cooper, 105 Pa. 239; Pusey v. Allegheny, 98 Pa. 522; and will be enjoined: Bonaparte v. R. R., 1 Baldwin, 205; Jarden v. R. R., 3 Wharton, 502; Shenandoah Co.'s Appeal, 2 Weekly Notes Cas. 47. If there is no taking an action on the case is the appropriate remedy: Delaware Co.'s Ap., 119 Pa. 159. The injury is complete as soon as the work is actually undertaken, and the original party cannot split his damages into separate actions, but must submit his entire claim in one proceeding: Pusey v. Allegheny, 98 Pa. 522; O'Brien v. P. S. V. R. Co., 119 Pa. 184.

² The right acquired is an easement: Pittsburgh, etc., R. R. Co. v. Bruce, 102 Pa. 24.

³ The petition should follow the act: Quigley's Case, 3 P. & W. 139; Reitenbaugh v. R. R., 21 Pa. 100; but may be amended: Penna., etc., R. R. v. Bunnell, 81 Pa. 414; and the statements therein should be verified by affidavit, and notice thereof be given to the other party: Reitenbaugh v. R. R., *ubi supra*.

⁴ The acts includes "All owners of titles in or growing out of land whose rights are capable of actual privation by the taking." Phila., etc., R. R. v. Williams, 54

five discreet and disinterested freeholders of the proper county, and appoint a time not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained, or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party.¹

VIEWERS.²—And the said viewers, or any three of them, having been first duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams or property so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said streams,³ land or materials, in consequence of the making the improvements or conducting the operations of such corporation or of the construction of works for which the property is to be taken;⁴ and after having made a fair and just comparison of said advantages and

Pa. 109; hence a tenant for life is an owner within the statute: *Harrisburg v. Crangle*, 3 Watts & Serg. 460; *Railroad v. Boyer*, 13 Pa. 497; *Passmore v. R. R.*, 9 Phila. Rep. 579; and so is a tenant for years: *North Penn. R. R. v. Davis*, 26 Pa. 238; *Turnpike Road v. Brosi*, 22 Pa. 29; *Brown v. Powell*, 25 Pa. 229; *Penna. R. R. Co. v. Ely*, 107 Pa. 172; and the landlord and tenants may unite and have the damages apportioned: *Getz v. Phila. & Reading R. R.*, 105 Pa. 547; and when land charged with a dower interest is taken without notice to the widow the latter can maintain debt against the corporation: *Borough of York v. Welsh*, 117 Pa. 174. [In *Pittsburgh R. R. v. Bentley*, 88 Pa. 178, it was held that the admission of life insurance tables to determine the probable duration of the life tenant's existence, was not error, although the contrary had been somewhat broadly decided in the prior case of *Shippen's Appeal*, 80 Pa. 391.] They must, however, be owners at the time of the taking: *Phila., etc., R. R. v. Lawrence*, 1 Leg. Chron. 404. An owner of a ground rent cannot petition: *Workman v. Mifflin*, 30 Pa. 371; but if the property taken is subject to ground rent, the owner of the rent will be compensated by appropriate proceedings: *Voegtly v. R. R.*, 2 Grant's Cas. 243; *Powell v. Whitaker*, 88 Pa. 445; and as to the rights of a mortgagee, see *Knoll v. New York, etc., Co.*, 121 Pa. 467.

¹In *re Road in South Abington*, 109 Pa. 119. Notice must be given to the owners of each property taken: *Reitenbaugh v. R. R.*, 21 Pa. 104.

²Act 29 April, 1874, § 41; P. L. 104.

³*City of Reading v. Althouse*, 93 Pa. 400. Appropriating the water of a non-navigable stream entitles the owner of adjacent land to damages: *Shenandoah Co.'s Appeal*, 2 Weekly Notes Cas. 46; and the owner of a mill-race who has purchased the right to use water from the owners of land bordering on the stream has a property in the waters of the stream: *Lycoming Gas Co. v. Meyer*, 99 Pa. 615. In *Union Canal Co. v. Stump*, 81 Pa. *355, the question was discussed whether after the payment of damages for diverting a stream, a permanent increased diversion thereof amounted to a new taking, but the point was not decided.

⁴*Penna. Schuylkill Valley R. R. v. Walsh*, 23 Weekly Notes Cas. 421; *Id. v. Ziemeer*, *Id.* 423.

disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained,¹ and to whom payable,² and make report thereof to the said court.³

¹ The statute "In terms authorizes compensation for damages purely consequential," (*Hoffer v. Canal Co.*, 87 Pa. 221), and recovery can therefore be had for all direct or indirect damages capable of ascertainment which amount to the deprivation of a common law right: *Lehigh Valley R. R. v. Trone*, 28 Pa. 206; *Watson v. R. R.*, 37 Pa. 469; *East Pa. R. R. v. Hottenstine*, 47 Pa. 30; *Western Pa. R. R. v. Hill*, 56 Pa. 460; *Wilmington, etc., R. R. v. Stauffer*, 60 Pa. 374; *Pittsburgh, etc., R. R. v. Rose*, 74 Pa. 362; *Hoffer v. Canal Co.*, *supra*. While, conversely, compensation will obviously be refused for merely speculative and uncertain damages: *Sunbury, etc., R. R. v. Hummell*, 27 Pa. 99; *Lehigh Valley R. R. v. Lazarus*, 28 Pa. 203; *Searle v. R. R.*, 33 Pa. 57; *Patten v. R. R.*, *Id.* 426; *Harrisburg R. R. v. Stayman*, 2 Weekly Notes Cas. 103; *Pittsburgh, etc., R. R. Co. v. Patterson*, 107 Pa. 461; *Penna. R. R. Co. v. Eby*, 107 Pa. 173; *Pittsburgh R. R. Co. v. McCloskey*, 110 Pa. 436.

The true measure of damages is the market value of the property taken, which is not necessarily the price obtainable at a forced sale: *Pittsburgh Co. v. Vance*, 115 Pa. 325; and in cases of partial taking, this market value is subject to be increased or diminished by the appreciation or deterioration of the remaining portion by reason of the work; or in other words, the difference between the value before and after the taking: *Searle v. R. R.*, 33 Pa. 57; *Watson v. R. R.*, 37 Pa. 469; *East Pa. R. R. v. Hottenstine*, 47 Pa. 28; *Harvey v. R. R.*, *Id.* 428; *Hornstein v. R. R.*, 51 Pa. 87; *Western Pa. R. R. v. Hill*, 56 Pa. 460; *Pittsburgh, etc., R. R. v. Rose*, 74 Pa. 363; *Penna. R. R. v. Bunnell*, 81 Pa. 414; *Pittsburgh, etc., R. R. v. Bentley*, 88 Pa. 178; *City v. Linnard*, 97 Pa. 242, and any fact which affects the value of the land at the time of the taking is admissible in evidence: *East Brandywine Co. v. Ranck*, 78 Pa. 454; *Danville, etc., R. R. v. Gearheart*, 81 Pa. *260; *McTerren v. R. R.*, 2 Weekly Notes Cas. 40; 32 Leg. Int. 328; *Penna. Canal Co. v. Hill*, 6 Weekly Notes Cas. 182; *Shenango, etc., R. R. v. Braham*, 79 Pa. 447; *Pittsburgh R. R. v. Robinson*, 95 Pa. 426; *City v. Linnard*, 97 Pa. 242; *Allegheny v. Black*, 99 Pa. 152; *Pittsburgh, etc., Co. v. Patterson*, 107 Pa. 461; *Pittsburgh, etc., R. R. Co. v. McCloskey*, 110 Pa. 436; such as prior deterioration of value by the exercise of the power of eminent domain by another corporation: *Lycoming Gas Co. v. Meyer*, 99 Pa. 615. The point of inquiry is the market value of the land, not the value of minerals beneath the land: *Reading & Pottsville R. R. Co. v. Balthaser*, 119 Pa. 472; *Searle v. Lackawanna, etc., R. R.* 33 Pa. 64.

For measure of damages for taking a private bridge, see *Montgomery Co. v. Bridge Co.*, 110 Pa. 54; affecting a ferry: *Pittsburgh, etc., Co. v. Jones*, 111 Pa. 204; a well, *Pittsburgh, etc., Co. v. Vance*, 115 Pa. 325; a leasehold, *Getz v. Phila. & Reading R. R. Co.*, 105 Pa. 547; farm land, *Balt. & Ohio R. R. Co. v. Springer*, 21 Weekly Notes Cas. 143. The landlord's right to damages is a paramount right, and can be enforced against a sheriff's vendee of the corporate franchises: *Lycoming Gas Co. v. Meyer*, 99 Pa. 615; *Western Pa. R. R. v. Johnston*, 59 Pa. 290.

The owner is also entitled to interest as damages from the date of the taking: *Railroad v. Gesner*, 8 Harris, 240; *Penna. R. R. v. Cooper*, 58 Pa. 408; *Delaware, etc., R. R. v. Burson*, 61 Id. 369; *Bare v. Hoffman*, 79 Id. 72; *Penna., etc., R. R. Co. v. Zeimer*, 23 Weekly Notes Cas. 423; *Myers v. Schuylkill Valley Co.*, 45 Leg. Int. 236.

² Hence questions of title may be incidentally tried by the viewers: *Wineliddle v. R. R.*, 2 Grant's Cas. 32.

³ Reporting a gross sum is not irregular: *Phila., etc., R. R. v. Trimble*, 4 Wharton, 47; *Tucker v. R. R.*, 27 Pa. 283; *Harvey v. R. R.*, 47 Pa. 423; *Western Pa. R. R. v. Hill*, 56 Pa. 460; *Delaware, etc., Co. v. Burson*, 61 Id. 369; *Lodge v. R. R.*, 9 Phila. Rep. 543; but the report must state the quantity, quality and value of the lands. "The advantages and disadvantages likely to result cannot reasonably be set down in detail, but the fact that there has been a comparison of them should be certified, and the amount of damages, and to whom payable, should be distinctly stated." *Reitenbaugh v. R. R.*, 21 Pa. 100; *Penna. R. R. v. Bruner*, 55 Pa. 318; and an omission in this respect will vitiate the report: *Phila., etc., R. R. v. Cake*, 95

JUDGMENT AND EXECUTION.—And if any damages be awarded,¹ and the report be confirmed by the said court,² judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt,³ for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said corporation. **FEES.**—And each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

WHEN COMPANY MAY TENDER SECURITY.⁴—In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, water, water-rights, franchises or materials, the corporation shall tender a bond with at least two sufficient sureties to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to be [the] guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be entitled to receive after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act.⁵

PROCEEDINGS ON REFUSING TO ACCEPT SECURITY TENDERED.⁶—*Provided*, That in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then

Pa. 139. The same decision has been made under other and nearly similar statutes: *Zack v. R. R.*, 25 Pa. 394; *O'Hara v. R. R.*, Id. 445; *Penna. R. R. v. Porter*, 29 Pa. 165. Evidence of service of notice of the view should also be attached to the report: *Reitenbaugh v. R. R.*, *ubi supra*.

¹ Unliquidated damages for a tortious entry cannot be attached: *Selheimer v. Elder*, 98 Pa. 154.

² The evidence taken before the viewers is not part of the record: *Reitenbaugh v. R. R.*, 21 Pa. 104; *Ohio, etc., R. R. v. Bradford*, 19 Pa. 363; *Wineliddle v. R. R.*, 2 *Grant's Cas.* 32; *Penna. R. R. v. Bruner*, 55 Pa. 318; and as to the power of the court to set aside the report upon the ground that the damages were excessive, see *Penna. R. R. v. Heister*, 8 Pa. 445; *Wineliddle v. R. R.*, *supra*; *North Pa. R. R. v. Davis*, 26 Pa. 238; *Railroad v. Gesner*, 13 Pa. 240; *Penna. R. R. Co. v. Congregation*, 53 Pa. 445; *Cake v. R. R.*, 95 Pa. 139.

³ The confirmation is a judgment upon which execution can issue, although the company do not take possession: *Neal v. R. R.*, 31 Pa. 19; *Davis v. R. R.*, 2 *Phila. Rep.* 146. And the right acquired by the company is but an easement: *Western Pa. R. R. v. Johnston*, 59 Pa. 290; *Pittsburgh, etc., R. R. Co. v. Bruce*, 102 Pa. 24.

⁴ Act 29 April, 1874, § 41; P. L. 104. This section is taken from Act 9 April, 1856, § 2; P. L. 283.

⁵ The bond is security for all damages: *Wadhams v. R. R.*, 42 Pa. 303.

⁶ Act 29 April, 1874, § 41; P. L. 105.

give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bond to the Court of Common Pleas of the county where the lands, streams, water or materials are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.¹

APPOINTMENT OF VIEWERS.²—The viewers provided for in this section may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for.

APPEALS AND PROCEEDINGS THEREON.³—And upon the report of said viewers, or any four of them, being filed in said court, either party, within thirty days thereafter,⁴ may file his, her or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court,⁵ and the same shall then be tried by said court and a jury,⁶ and after final judgment, either party may have a writ of error thereto from the Supreme Court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and if allowed, a new view shall be ordered; and if disallowed, the appeal shall proceed as before provided.⁷

¹ The approval by the court is an adjudication that everything had been done which entitled the company to file the bond: *Wadhams v. R. R.*, 42 Pa. 303. If the corporation voluntarily give a bond, not under the statute, conditioned to pay all damages sustained, the obligee may proceed directly thereon, instead of resorting to the statutory proceedings: *Penna. Nat. Gas Co. v. Cook*, 23 Weekly Notes Cas. 52.

² Act 29 April, 1874, § 41; P. L. 104. This section is taken from the Act of 9 April, 1856, § 3; P. L. 288.

³ Act 29 April, 1874, § 41; P. L. 106.

⁴ That is thirty days after the filing of the report of the viewers: *Gwinner v. R. R.*, 55 Pa. 126.

⁵ The usual practice is trespass *quare clausum fregit*: *Cooke v. City*, 2 Weekly Notes Cas. 446; *Sheuango, etc., R. R. v. Braham*, 79 Pa. 452.

⁶ It is not error to refuse an application to permit the jury to view the property if delay in the trial will probably ensue: *Bare v. Hoffman*, 79 Pa. 72.

⁷ The constitution [Art. XVI, § 8] provides, "The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall on the demand of either party be determined by a jury according to the course of the common law." And the Act of 13 June, 1874 [P. L. 283], authorizes appeals from preliminary assessments of damages for "property taken, injured or destroyed" when an appeal is not provided for or regulated by existing laws: *Re Springdale Township Road*, 91 Pa. 260.

29. Power of Court to Determine Corporate Rights.¹—In all proceedings in courts of law or equity of this commonwealth, in which it is alleged that the private rights of individuals, or the rights or franchises of other corporations, are injured or invaded by any corporation claiming to have a right or franchise to do the act from which such injury results, it shall be the duty of the court in which such proceedings are had, to examine, inquire and ascertain whether such corporation does, in fact, possess the right or franchise to do the act from which such alleged injury to private rights or to the rights and franchises of other corporations, results; and if such rights or franchises have not been conferred upon such corporation, such courts, if exercising equitable power, shall, by injunction, at suit of the private parties or other corporations, restrain such injurious acts; and if the proceedings be at law for damages, it shall be lawful therein to recover damages for such injury as in other cases.

30. Amendments to Charters. FIRST CLASS.²—As often as the corporations named in the first class, specified in the second section of the act to which this is a supplement,³ including all such corporations now in existence, and academies, colleges and universities, shall be desirous of improving, amending or altering the articles and conditions of their charters, it shall and may be lawful for such corporations,⁴ respectively, in like manner to specify the improvements, amendments or alterations which are or shall be desired,⁵ and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated as aforesaid, where, [when] if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of the statute to which this is a supplement or of the constitution, it shall be the duty of said court to direct notice to be given,⁶ as provided in the third section of the act to which this is a supplement,⁷ of such application, and after decree made⁸ and such amendments are recorded, the same shall be deemed and taken to be part of the charter of the said corporation.

¹ Act 19 June, 1871, § 1; P. L. 1361; *Sterling's Ap.*, 111 Pa. 40.

² Act 29 April, 1874, § 42, as amended by Act 17 April, 1876, § 12; P. L. 37.

³ *Supra*, p. 8.

⁴ The application must be by the corporation and not by the individual members thereof: *St. Mary's Church*, 6 S. & R. 498; *Com. v. Cullen*, 13 Pa. 133; *Langolf v. Seiberlitch*, 2 Parson's Eq. Cas. 64; *Brown v. Mining Co.*, 30 Leg. Int. 124; and the court may inquire by what authority the seal was affixed to the application: *St. Mary's Church*, 7 S. & R. 517; *Re Mercantile Library*, 2 Brewster, 447.

⁵ The petition must be specific and full: *Re Grand Lodge*, 110 Pa. 613.

⁶ Approval should precede advertising: *Re Asbury Church*, 1 Chester Co. Rep. 580.

⁷ *Supra*, p. 17.

⁸ Certiorari lies to correct an abuse of discretion by the court below, and such

CHANGE OF NAME.¹—It shall be lawful for the several Courts of Common Pleas of this commonwealth to change the name, style and title of any corporation within their respective counties, with the same proceedings and in the same manner as they are now authorized to improve, amend or alter charters: *Provided*, That no proceeding for such purpose shall be entertained by the courts until notice of such application is given to the auditor general, and proof of such fact is produced to the courts; and upon final decree in such proceeding, before using such name, the parties in interest shall file with the auditor general a copy of the decree making such change.²

AMENDMENT OF CHARTERS OF SECOND CLASS.³—When any corporation, formed for any of the purposes named in the second class of section two of the act to which this is a supplement, or embraced

certiorari may be taken by any member of the corporation to be affected by the proposed amendment: *Re Grand Lodge*, 110 Pa. 613; *supra*, p. 19, n. 1.

¹ Act 20 April, 1869; P. L. 82. This statute is not repealed by the Acts of 1874 or 1876, and in proceedings thereunder the record must disclose that notice was given to the auditor general: *In re First Presbyterian Church*, 107 Pa. 543; 111 Pa. 156, wherein the court said, "As regards secular corporations at least the Act of 1869 is a valuable one and is not to be treated as repealed by implication when no such intent is discoverable in the subsequent act." See *In re Fidelity Mutual Aid Association*, 39 Leg. Int. 257; 12 Weekly Notes Cas. 269. As to corporations of the second class, when the matter first came before the Department in 1885 the deputy attorney general decided that the corporation amendment Act of 1883 (*infra*, note 3) did not repeal the provisions of the Act of 1869, and that applications for the change of the names of such corporations must be made to the courts in manner therein provided: *In re Martin Color, etc., Co.*, 16 Weekly Notes Cas. 510. Two years subsequently, however, this construction was reversed by the attorney general (without referring to the former opinion), and it was held that the corporation amendment Act of 1883 (*infra*, note 3), authorized corporations of the second class to apply to the governor for a change of name: *Re Excelsior Oil Co.*, O. A. G., 31 March, 1887; and on 7 June, 1888, the attorney general instructed the Secretary of the Commonwealth, in an opinion of that date, that the Act of 1883 supplied the provisions of the Act of 1869, and that the latter was no longer in force as to corporations of the second class, and that thereafter as to such corporations applications to change the corporate name must be solely made to the governor, and the certificate recorded in the department of the Secretary of the Commonwealth: *Re Wetherill Steel Casting Co.*, O. A. G., 5 Pa. Ct. Rep. 337. In accordance with this opinion "a change of name" index has been prepared in the latter department: see report for 1888 of the Secretary of the Commonwealth, page 8.

² By the Act of 11 April, 1879, P. L. 22, it is provided:

TITLE TO REAL ESTATE OF RELIGIOUS CORPORATIONS AFTER AMENDMENT OF CHARTER.—"When, under existing laws, any religious corporation shall apply to the Court of Common Pleas of the proper county for an amendment or alteration of their charter, so as to acquire and hold real estate, and after decree and amendments are recorded and shall become a part of the charter of the said corporation, then such real estate which was purchased by and conveyed unto said corporation before amendment of their charter shall enure and vest in said corporation, with the same force and effect as if originally empowered to hold and acquire real estate: *Provided*, That no inquisition shall have been taken against the real estate so held to escheat previous to the amendment of said charter: and *provided further*, That such real estate shall not exceed the amount in value which religious corporations are allowed to hold by charter."

³ Act 13 June, 1883, § 1; P. L. 122.

in that class by any of its supplements, and which shall have been or may hereafter be incorporated under the provisions of that act or its supplements, as also any corporation of the second class which has heretofore or may hereafter accept the provisions of said act and the several supplements thereto, and the constitution of this commonwealth in the manner provided by law, shall desire to improve, amend or alter the article and conditions of the charter or instrument upon which said corporation is formed and established, it shall and may be lawful for such corporation to apply to the governor of this commonwealth for such improvement, amendment or alteration in the manner provided by this act.

ADVERTISEMENT.¹—The corporation desiring such improvement, amendment or alteration shall give notice of the intention to apply therefor, in two newspapers of general circulation, printed in the county wherein the principal office or place of business of said corporation is located, once a week for three weeks, setting forth briefly the character and objects of the desired improvements, amendments or alterations, and the intention to make application therefor.

CERTIFICATE—PROCEEDINGS THEREON.²—The said corporation shall prepare a certificate under its corporate seal, setting forth the character and objects of the proposed improvement, amendment or alteration of their charter or the instrument upon which said corporation is formed or established, acknowledged by the president and secretary of said corporation, before the recorder of deeds of the county wherein such corporation has its principal office or place of business, which certificate, together with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of the commonwealth, who shall examine the same, and if he find it to be in proper form, and that such improvements, amendments or alterations are or will be lawful and beneficial, and not injurious to the community, and are in accord with the purposes of the charter,³ he shall approve thereof and endorse his approval thereon, and direct letters-patent to issue in the usual form, reciting the said

¹ Act 13 June, 1883, § 2; P L. 122.

² Id., § 3.

³ This section has been construed by the attorney general as authorizing the change of name of a corporation of the second class: *supra*, p. 56, n. 1. A company authorized "to supply light by means of electricity may by amendment acquire the right to supply heat and power by means of electricity and steam generated in their lighting plant;" *Re Wilkesbarre Electric Light Co.*, O. A. G., 22 July, 1886. "Upon the question of the power and propriety of clothing a gas company with the additional franchise of an electric light company by an amendment to its charter the impression seems to be that such amendment can be made." Opinion Sec. of the Com., March 5, 1888: *Re Conshohocken Gas Light Co.*, 5 Pa. C. Ct. Rep. 585. But an amendment attempting to increase the number of counties through which a telephone or telegraph company may operate will not be approved: *Re Pennsylvania Telephone Co.*, O. A. G., 2 Chester Co. Rep. 129.

improvements, amendments or alterations, and the said certificate shall then be recorded in the office of the secretary of the commonwealth, and with all its endorsements shall then be recorded in the office for the recording of deeds in and for the proper county where the principal office or place of business of said corporation is located, and from thenceforth the same shall be deemed and taken to be a part of the charter or instrument upon which said corporation was formed or established to all intents and purposes, as if the same had originally been made a part thereof: *Provided*, That nothing herein contained shall authorize the amendment, alteration, improvement or extension of the charter of any gas or water company so as to interfere with or cover territory previously occupied by any other gas or water company.¹

CORPORATION TO BE SUBJECT TO ACT OF 1874—EMINENT DOMAIN.²—Nothing in this act contained shall be construed to repeal or authorize the repeal of any of the requirements or restrictions of the said act of April twenty-ninth, one thousand eight hundred and seventy-four and its supplements, nor to dispense with any of the provisions of the said act, nor to authorize the right of eminent domain to be given to any corporation by amendment of its charter, nor to permit any change in the objects and purposes of such corporation as shown by its original charter.

31. Consolidation of Corporations of First Class.³—And if any two or more such corporations shall desire to consolidate and merge with each other, or one or more within the other, upon application to the Court of Common Pleas of the county in which the corporation is situated, into which the one or more desire to merge or become consolidated with the same proceedings shall take place as are required on an application to amend; and upon decree being made by said court, and the same being recorded in said county, upon the terms specified in said application, the said corporations, with all their rights, privileges, franchises, powers and liabilities, shall merge and be consolidated into, by the name, style and title given to the same in such decree, and upon the terms, limitations and with the powers stated and conferred in said application and decree.

32. Bonus.⁴—Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge and

¹ Under this clause a reasonable extension of the territorial limits of a water company may be made by amendment, when such amendment does not conflict with the rights of any other company: *In re Sayre Water Co.*, O. A. G., March 21, 1884.

² Act 13 June, 1883, § 4; P. L. 122.

³ Act 29 April, 1874, § 42, as amended by Act 17 April, 1876, § 12; P. L. 37.

⁴ Act 29 April, 1874, § 44, as amended by Act 22 May, 1878; P. L. 97.

cemetery companies, or building and loan associations, and excepting all of those corporations named in the first class of section two of this act, shall pay to the state treasurer for the use of the commonwealth, a bonus of one-quarter of one per centum upon the amount of the capital stock which said company is authorized to have,¹ in two equal instalments, and a like bonus upon any subsequent increase thereof.² The first instalment shall be due and payable upon the incorporation of said company or upon the increase of the capital thereof, and the second instalment one year thereafter,³ and no company as aforesaid shall have or exercise any corporate powers until the first instalment of said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the first instalment of said bonus has been paid to the state treasurer; and no company incorporated as aforesaid shall go into operation or exercise any corporate powers or privileges until said first instalment or bonus has been paid as aforesaid:⁴ *Provided*, That when any corporation shall have reduced its capital stock in accordance with the provisions of the twenty-third section of this act, such corporation shall not be liable in the aggregate for a greater bonus than one-fourth of one per cent. upon the capital stock as altered and reduced.

BONUS ON INCREASED CAPITAL.⁵—From and after the passage of this act, any corporation heretofore or hereafter incorporated by or under any general or special law of this commonwealth, except railroad, canal, turnpike, bridge and cemetery companies, building and loan associations, agricultural societies and companies or associations incorporated for literary, charitable or religious purposes, upon increasing their capital stock, in pursuance of any general or special law, shall pay to the state treasurer, for the use of the commonwealth, a bonus of one-quarter of one per centum upon the amount of the authorized increase, in two equal annual instalments; the first shall be due and payable upon the date of the authority to increase as aforesaid, and the second within one year thereafter. All laws or parts of laws inconsistent herewith are hereby repealed.

¹ The bonus is upon the authorized capital, not upon the amount issued: O. A. G., 11 Sept., 1878.

² A corporation which by special act is privileged "to increase its capital stock from time to time," cannot be required upon such increase being made to pay this bonus: *Com. v. Erie and Western Transportation Co.*, 107 Pa. 112.

³ The bonus is not a tax but the price for the charter, and bears interest until paid: *Com. v. Alliance Co.*, 13 Weekly Notes Cas. 324; 40 Leg. Int. 280; see *Com. v. Erie and Western Transportation Co.*, 107 Pa. 112.

⁴ Corporations rechartered under § 40 of this act must pay the required bonus; *aliter* as to corporations accepting the provisions of the act which have already paid such bonus: *supra*, p. 49, n. 1.

⁵ Act 7 May, 1889; P. L. 115.

33. Donations of Wages for Charity.¹—It shall be the duty of any corporation, manufacturing establishment or colliery, to retain from and out of the wages or earnings of any person by them employed, on his written order, any contribution or voluntary subscription by such person, made in monthly or other payments, for the support of any hospital or other charitable institution, and the sum so retained to pay over upon demand to such hospital or other charitable institution; and any payment so made shall be as valid as if paid to the person by whom said wages or earnings were earned: *Provided*, That the hospital or charitable institution claiming the same, shall give notice in writing at least ten days before the time for the payment of said wages or earnings to such corporation, manufacturing establishment or colliery, of the name or names of the person or persons by them employed, who have subscribed to the support of such hospital or charitable institution, and the amount by them severally subscribed, and when or how often payable, and how long to continue, and file said subscription with said corporation, manufacturing establishment or colliery.

34. Computation of Time.²—Where, by any existing law or rule of court, or by any law or rule of court that may hereafter be enacted and made, the performance or doing of any act, duty, matter, payment or thing shall be ordered and directed, and where any court shall, by special or other order, direct the performance or doing of any act, matter, payment, sentence or decree, and the period of time or duration for the performance or doing thereof shall be prescribed and fixed, such time in all cases shall be so computed as to exclude the first, and include the last days of any such prescribed or fixed period or duration of time: *Provided*, That whenever the last day of any such period shall fall on Sunday, or on any day made a legal holiday by the laws of this commonwealth, or of the United States, such day shall be omitted from the computation: *And Provided*, That this act shall not apply to the payment of negotiable paper.

³The provisions of this act shall also apply to the ordinances, resolutions, by-laws and other regulations of all municipal or other public or private corporations now existing or hereafter created.

35. Real Estate.⁴—The provisions of the act, entitled “An Act to extend the time during which corporations may hold and convey

¹ Act 15 May, 1874; P. L. 194.

² Act 20 June, 1883, § 1; P. L. 136.

³ *Id.*, § 2.

⁴ Act 26 May, 1887; P. L. 274. The prior acts limiting the amount of real estate to be held by corporations, and authorizing purchases at judicial sales are quoted *supra*, p. 10.

the title to real estate heretofore bought under execution, or conveyed to them in satisfaction of debts, and now remaining in their hands unsold," approved the twenty-second day of May, Anno Domini one thousand eight hundred and eighty-three, which provides, "That the time during which all corporations are authorized, by law and their charters, to hold and convey real estate acquired by them under execution, or in satisfaction of debts, be and the same is hereby extended to all property heretofore bought and now held by such corporations for and during a further period of five years, from and after the expiration of the time during which, as aforesaid, they are now so authorized to hold and convey the same," be and the same are hereby revived, continued and extended for a further period of five years, from and after the time for which they are now authorized by law to hold the same.

ESCHEAT.¹—No real or personal property, the title to which is or may be held by or in the name of any corporation of this state, authorized by its charter or general law to hold the same, shall be escheated to the commonwealth, nor shall, in any judicial proceeding, any inference of any relation of trust or agency arise, by reason of the character or residence of the shareholders holding the whole or part of the capital stock of such corporation, nor because the beneficial ownership of said property, in whole or in part, is or has been in any person or persons, corporation or corporations, prohibited from holding the same.

²Said lands and property shall again become liable to escheat to this commonwealth, as already provided by law, if said corporation shall continue to hold said lands and property exceeding five years after the passage of this act, and an information in the nature of a *quo warranto* or other proper proceeding shall be filed or brought by this commonwealth to escheat the same: *Provided*, That no railroad, canal or other transportation company of this state, nor any corporation, in whose name the title to other lands or property is held, shall plead or have the benefit of this act, unless it shall have previously filed with the secretary of the commonwealth a certificate in writing, signed by the president and secretary, and attested by the corporate seal of the company, stating that, at a regular or special meeting of said board of directors, a resolution, in pursuance to the consent of the stockholders, was adopted, accepting all the provisions of the seventeenth article of the constitution of the state, and that all the powers of and privileges and the limitations and restrictions mentioned therein shall be deemed and taken for all purposes to apply to said corporation. No such certificate shall be made by the officers aforesaid, without the consent of the stockholders of the corporation at a general or special meeting, first had and obtained: *Provided*

¹Act 2 June, 1887, § 1; P. L. 302.

²*Id.*, § 2.

further, That no railroad, canal or other transportation company shall plead or have the benefit of this act, unless it shall have previously filed, with the secretary of state, its acceptance of all the provisions of article seventeen of the constitution of this state in manner and form as provided by law.

SPECIAL PROVISIONS.

36. Insurance.

INSURANCE OF DOMESTIC ANIMALS.¹—Companies incorporated under the provisions of this act for the insurance of the lives of domestic animals or any of them, shall have the power and right to make insurance of every kind pertaining to or connected with life risks of domestic animals of any and every kind, and against the loss by death of all kinds of cattle, live stock, valuable beasts, and domestic animals of every kind, whether such death be the result of accident, natural causes or diseases of any description whatever, and to make, execute and perfect such and so many contracts, agreements, policies and other instruments as may be required therefor.

LIFE AND ACCIDENT INSURANCE COMPANIES.²—Companies incorporated under the provisions of this act for the insurance of human beings against sickness, death or personal injury, shall have the power and right to make insurances of every kind pertaining to or connected with death, accidents of every nature and kind to human beings, and to insurances of every kind against the death, sickness or the health of human beings by disease of every kind, and whether within this commonwealth or beyond it, and such corporations shall have the power and right to make, execute and perfect such and so many contracts, agreements, policies and other instruments as may be required therefor.

37. Title Insurance and Trust Companies.

REAL ESTATE TITLE INSURANCE COMPANIES—TRUST COMPANIES—POWERS.³—Companies which may have been heretofore, or which may hereafter be, incorporated under the provisions of this act for the insurance of owners of real estate, mortgagees and others interested in real estate, from loss by reason of defective titles, liens and incumbrances, shall have the power and right :

First. TO INSURE TITLES.—To make insurances of every kind pertaining to or connected with titles to real estate, and to make, exe-

¹ Act 29 April, 1874, § 27 ; P. L. 84. Repealed as stated *supra*, p. 11, n. 3.

² *Id.*, § 28 ; P. L. 84. Repealed as stated *supra*, p. 11, n. 4.

³ *Id.*, § 29 ; as amended by Act of 9 May, 1889, § 1 ; P. L. 159.

cute and perfect such and so many contracts, agreements, policies and other instruments as may be required therefor.

Second. TO RECEIVE AND DISPOSE OF PROPERTY.—To receive and hold on deposit and in trust and as security estate, real and personal, including the notes, bonds, obligations of states, individuals, companies and corporations, and the same to purchase, collect, adjust and settle, sell and dispose of in any manner without proceeding in law or equity, and for such price, and on such terms as may be agreed on between them and parties contracting with them: *Provided*, That nothing herein contained shall authorize said companies to engage in the business of banking.

Third. TO INSURE FIDELITY AND ACT AS DEPOSITORY.—To make insurance for the fidelity of persons holding places of responsibility and of trust, and to receive upon deposit for safe-keeping jewelry, plate, stocks, bonds and valuable property of every description, upon terms as may be agreed upon.

Fourth. TO EXECUTE TRUSTS.—To act as assignees, receivers, guardians, executors, administrators, and to execute trusts of every description not inconsistent with the laws of this state or of the United States.¹

Fifth. TO ACT AS AGENTS, ETC.—To act as agents for the purpose of issuing or countersigning the certificates of stock, bonds or other obligations of any corporation, association or municipality, state or public authority, and to receive and manage any sinking fund thereof on such terms as may be agreed upon.

Sixth. TO BECOME SURETY.—To become sole surety in any case where by law one or more sureties may be required for the faithful performance of any trust, office, duty, action or engagement.

Seventh. POWER TO RECEIVE AND CONVEY REAL ESTATE.—To take, receive and hold any and all such pieces of real property as may have been, or may hereafter be, the subject of any insurance made by such companies under the powers conferred by their charter, and the same to grant, bargain, sell, convey and dispose of in any such manner as they see proper.

Eighth. To purchase and sell real estate and take charge of the same.

Ninth. TO ACT AS SECURITY.—To act as security for the faithful performance of any contract entered into with any person or municipal or other corporation, or with any state or government, by any person or persons, corporation or corporations.

Tenth. To become sole security for the faithful performance of the duties of any national, state, county or municipal officer, and to execute such bonds or recognizances as may be required by law in such cases.

¹ "In all cases where a corporation is or shall be charged with the execution of any trust, the president, vice-president, trust officers, secretary, treasurer or actuary of such corporation, shall make the usual oath or affirmation directed to be taken by private persons in such other like cases." Act 16 February, 1877; P. L. 3.

Eleventh. To become security for the faithful performance of the duties of any clerk or employee of any corporation, company, firm or individual.

Twelfth. To become security for the payment of all damages that may be assessed and directed to be paid for lands taken in the building of any railway, or for the purposes of any railway, or for the opening of streets or roads, or for any purpose whatever where land or other property is authorized by law to be taken.

Thirteenth. To become security upon any writ of error or appeal, or in any proceeding instituted in any court of this commonwealth, in which security may be required: *Provided, however,* That nothing in this act shall be so construed as to dispense with the approval of such body, corporation, court or officer, as is by law now required to approve such security.

REQUISITES PRIOR TO EXERCISE OF POWERS.—*Provided, however,* That before exercising any of the powers hereby conferred, each such corporation shall have a paid-up capital of not less than one hundred and twenty-five thousand dollars, an affidavit of which fact, made by the treasurer thereof, shall be filed in the office of the secretary of the commonwealth, and each such company, heretofore or hereafter incorporated, shall file in the office of the secretary of the commonwealth a certificate of its acceptance hereof, made by formal resolution adopted at a regular or called meeting of the directors, trustees, managers or other proper officers thereof and certified under the corporate seal of such company, and a copy of such affidavit and of such resolution certified under the seal of the office of the secretary of the commonwealth shall be evidence of compliance with the requirements hereof.

CAPITAL TO BE SECURITY.¹—Whenever such companies shall receive and accept the office or appointment of assignees, receiver, guardian, executor, administrator, or to be directed to execute any trust whatever, the capital of the said company shall be taken and considered as the security required by law for the faithful performance of their duties as aforesaid and shall be absolutely liable in case of any default whatever.

FIDUCIARIES MAY DEPOSIT FOR SAFE-KEEPING.²—That any executor, administrator, guardian or trustee having the custody or control of any bonds, stock, securities or other valuables belonging to others, shall be authorized to deposit the same for safe-keeping with said companies.

¹ Act 9 May, 1889; P. L. 161.

² Act 9 May, 1889, cl. 3; P. L. 161.

COURT MAY INVESTIGATE AFFAIRS OF COMPANY.¹—That whenever any court shall appoint said companies assignees, receiver, guardian, executor, administrator, or to execute any trust whatever, the said court may, in its discretion, or upon the application of any person interested, appoint a suitable person to investigate the affairs and management of the company so appointed, who shall report to such court the manner in which its investments are made and the security afforded to those by or for whom its engagements are held, and the expense of such investigation shall be defrayed by the said company, or the court may if deemed necessary examine the officers of said company under oath or affirmation as to the security aforesaid.

SEPARATION OF TRUST FUNDS.²—The said companies shall keep all trust funds and investments separate and apart from the assets of the companies, and all investments made by the said companies as fiduciaries shall be so designated as that the trust to which such investment shall belong shall be clearly known.

INCREASE OF CAPITAL STOCK.³—That whenever such companies⁴ shall desire to increase their capital stock, they may do so according to the forms prescribed by law: *Provided*, The amount of capital stock after such increase shall not exceed two million dollars, and may change the par value of the shares to one hundred dollars each.

ACCEPTANCE OF CONSTITUTION.⁵—Such companies,⁴ before exercising any of the powers conferred by this act, shall first accept the provisions of the constitution of this commonwealth, adopted December sixteenth, one thousand eight hundred and seventy-three, and shall file with the secretary of the commonwealth a certificate of such acceptance, in writing, under their duly authenticated seal.

38. Road Companies.

CHARTER.⁶—The charter of a road company shall also state—
I. The kind of road intended to be constructed.⁷

¹ Act 9 May, 1889, cl. 4; P. L. 161.

² *Id.*, cl. 5; P. L. 162.

³ Act 11 June, 1885, § 2; P. L. 111.

⁴ *Viz.*: Companies authorized by their charter to act as trustees, receivers, assignees, guardians and committees.

⁵ Act 11 June, 1885, § 3; P. L. 111.

⁶ Act 29 April, 1874, § 30; P. L. 85. A turnpike is not a private road and cannot be closed by the stockholders against public use, and the forfeiture of the charter does not destroy the character of the road as a public highway: *Northern Central R. R. v. Com.*, 90 Pa. 300; *Pittsburgh, etc., R. R. v. Com.*, 104 Pa. 583.

⁷ A turnpike company is, in consideration of its franchises, bound to keep its road

II. The places from and to which the road is intended to be run.¹

III. The counties through which it is to pass and the estimated length of the road.

All road companies incorporated under this statute shall, from the date of the letters-patent creating the same, be governed, managed and controlled as follows, and shall be entitled to the benefits of all the general laws of this commonwealth regulating turnpike or plank roads.

Clause 1. POWERS OF DIRECTORS.—The directors of such corporation shall have full power and authority to appoint, agree and contract with such engineers, superintendents, artists, laborers and other persons, as they may think necessary to make and construct such road, and collect the tolls hereinafter authorized, and to fix their compensation; to ascertain the times, manner and proportions in which the stockholders shall pay the amount of their respective shares in order to carry on their work; to draw orders on the treasurer for all debts contracted by them, which orders shall be signed by the president, or in his absence by a majority of the directors, and attested by their clerk, and to do and transact all other acts, matters or things, as the by-laws, orders and regulations of such corporations shall be entrusted to them.

Clause 2. MAY ENTER UPON LANDS.—It may be lawful for the directors of such corporation, by and with their superintendents, engineers, artists, workmen, laborers, their tools and instruments, carts, wagons and other carriages, and beasts of draught or burden, to enter in and upon the lands contiguous and near to which the said road shall be made or constructed, first giving bond and proceeding as required by the forty-first section of this act.² Any such corporation may change the location of any part of its road which may interfere with any graveyard, or cemetery lot or lots.

Clause 3. ACCOUNTS.—The directors of every such corporation shall keep fair and just accounts, as well of all moneys received by

in a safe condition for public travel and cannot cast this responsibility upon an independent contractor: *Lancaster Av. Improvement Co. v. Rhoads*, 116 Pa. 377. And as to liability for injuries to third persons it has been said:

"Where a corporation, in consideration of the franchise granted to it, is bound by its charter to keep a road or bridge in repair, it is liable for any injury to a person arising from want of repair, whether the defect be patent or latent, unless he be in default, or unless the defect arose from inevitable accident, tempest or lightning, or the wrongful act of some third person, of which they had no notice or knowledge. It matters not that ordinary care was used in the erection or repair of it, and that such work was done under contract by competent workmen." *Penna. and Ohio Canal Co. v. Graham*, 63 Pa. 290; *Oil City Bridge Co. v. Jackson*, 113 Pa. 321.

¹ The termini of the road form part of the contract with the subscribers to the stock: *Manheim Road v. Arndt*, 31 Pa. 317; *Caley v. R. R.*, 80 Pa. 363.

² *Supra*, p. 50-54.

them, as of those paid out and expended in the prosecution of the work, and shall, at least once in every year, submit their books and accounts to a general meeting of the stockholders.

Clause 4. CONSTRUCTION OF BRIDGES AND ROADS.—The directors of such corporation shall have power to erect good and sufficient bridges over all the streams of water crossed by their road, whenever the same shall be found necessary, and shall cause a road, if a turn-pike, to be laid out not exceeding fifty feet in width, and cause at least eighteen feet of said width, exclusive of gutters, ditches or drains, to be made an artificial road of wood, stone, gravel or other proper and convenient materials, such as the nature of the ground may require, and will afford, to be constructed in such manner as will admit an even surface, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of four degrees from a horizontal line; and if a plank road, the same shall be opened of any width not exceeding forty feet, and shall be graded in such manner as may be necessary for either a single or double track, as may be determined upon by the directors of the said corporation, each track being not less than eight feet in width, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of three degrees with a horizontal line: *Provided*, That if any part of the ground on the route of said road shall be so hard and compact as to make a good road without any covering of wood, gravel, stone, slate or other hard substance, the said directors are hereby authorized to construct such part of said road without any such covering, and shall forever maintain and keep the same in good repair: *Provided*, That said bridges shall not be constructed so as to obstruct the navigation of any stream declared a public highway.

Clause 5. WHEN COURT TO LICENSE.—Whenever such corporation shall have finished five miles or more of road, or if the entire road be for a shorter distance, then when completed, the Court of Quarter Sessions, of the proper county, shall appoint forthwith three skilful, judicious and disinterested persons to view and examine the same, and report on oath or affirmation, whether the said road is so far executed in a competent and workmanlike manner, according to the true intent and meaning of this act, and if their report shall be in the affirmative, then the said court shall by its order, under the seal of the court, permit and suffer said corporation to erect and fix such and so many gates upon and across the said road as will be necessary and sufficient to collect from all persons otherwise than on foot the same tolls as is herein authorized and granted.

*Clause 6. RATES OF TOLL.*¹—When such corporation is licensed in manner aforesaid, it shall and may be lawful for them to appoint

¹ Act 29 April, 1874, § 30, clause 6, as amended by Act 30 April, 1879; P. L. 36.

such and so many toll-gatherers as they shall think proper, to collect and receive of and from all and every person or persons using the said road, the tolls and rates hereinafter mentioned, and to stop any person riding, leading or driving any horses, cattle, hogs, sheep, coach, coaches, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled or any other carriage of burden or pleasure from passing through the said gate, until they shall respectively have paid the same; that is to say, for every mile in length, or portion of a mile, whether passing through a gate or not of said road, completed and licensed as aforesaid, the following sums of money, and so in proportion for any greater or lesser number of sheep, hogs or cattle, to wit: For every score of sheep, one cent; for every score of hogs, two cents; for every score of cattle, two cents; for every horse and his rider, or led horse, one cent; for every sleigh or sled, one cent for each horse drawing the same; for every sulky, chaise or cart with two wheels, one cent for each horse drawing the same; for every carriage, coach, dearborn or wagon with four wheels, whose wheels shall be less than four inches in breadth, with one horse, one and one-half cents, and for every additional horse drawing the same, one cent; for every wagon of burden whose wheels shall be four inches and not exceeding seven inches wide, one cent for every horse drawing the same; for every wagon of burden the breadth of whose wheels shall be more than seven inches, one-half cent for each horse drawing the same: *Provided*, That for any wagon, et cetera, carrying burden exceeding two tons in weight on wheels less than four inches wide, and for any wagon, et cetera, carrying burden exceeding four tons in weight on wheels less than six inches wide, double rates may be charged.

PENALTY FOR FALSE REPRESENTATION.—And if any person or persons shall represent to the said company, or any of their officers or employees, that he or she or they have traveled a less distance than he or she or they have actually traveled along said road, with intent to defraud said corporation of its toll or any part thereof, such person or persons shall, for every such offence, be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the said corporation and the other half to the school fund of the township in which the offence was committed; and if said fine or penalty and the costs of the proceedings be not paid, then said alderman, magistrate or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law.

PENALTY FOR DEMANDING EXCESSIVE TOLL.¹—And if any toll-gatherer shall demand and receive toll for a greater distance than the person of whom such toll is demanded shall have traveled along said

¹ Act 29 April, 1874, § 30, clause 6; P. L. 86.

turnpike road or plank-road, or shall demand and receive greater toll from any person or persons than such toll-gatherer is authorized to demand and receive, by virtue of this act, such toll-gatherer shall forfeit and pay the sum of five dollars for every such offence to the supervisors of the township in which the forfeiture is incurred, to be expended in repairing township roads, and for the payment of which the said company shall be responsible; and all such penalties and forfeitures shall be recoverable, with costs of suit, before any justice of the peace of the county in which the offence is committed.

PERSONS EXEMPT FROM TOLL.¹—*Provided*, That no toll shall be demanded from any person or persons passing and re-passing from one part of his, her or their farm to any other part of the same farm; and all persons with their vehicles or horses, going to or from places of public worship, or of military trainings or elections shall be exempt from the payment of toll when traveling on such turnpike road.²

Clause 7. NEGLECT TO REPAIR ROAD—POWER OF JUSTICES OF THE PEACE.³—Justices of the peace shall be inspectors of roads

¹ Act 30 April, 1879; P. L. 37.

² Carriages used for burial purposes are not exempt from payment of tolls: *Philada., etc., Co. v. Gartland*, 6 Phila. Rep. 128.

³ Act of 29 April, 1874, § 30; P. L. 87. So far as this clause relates to plank roads and turnpikes it has been repealed by the following Act of 22 May, 1878, P. L. 85:

SECTION 1. *Proceedings on neglect to keep roads in repair.*—If any turnpike or plank road company incorporated under the laws of this commonwealth, shall neglect or refuse to keep their road in good traveling order and repair for the space of twenty days, and information thereof shall be given under oath or affirmation to any justice of the peace in the neighborhood and county, designating where and in what respect said road is defective, such justice shall issue a precept to any constable of the county, requiring him to notify the gate-keeper nearest whose gate the part or parts of the road complained of is situated, that on a certain day and at a certain hour therein mentioned, not less than three nor more than six days thereafter, three freeholders will be chosen at his office to hold an inquest to inquire into the truth of the matter specified in said information, an attested copy of which precept shall be given by said constable to said gate-keeper at the time of serving said notice.

SECTION 2. *Selection of inquest.*—The three persons mentioned in the preceding section, shall be chosen as follows: At the time and place fixed as aforesaid, the said justice shall prepare a list of names of fifteen reputable freeholders of the vicinity, and the complainant and agent, or other officer of the company, shall alternately strike out one name from the list till only three names remain, which three shall be the persons to hold said inquest; should either party be unrepresented at the time of choosing said freeholders, the justice shall act for him or them, and should neither party be present or represented the justice shall appoint three disinterested freeholders to hold said inquest.

SECTION 3. *Duties of inquest.*—The inquest thus chosen shall, after having been duly sworn or affirmed, proceed to view the part or parts of the road complained of, and shall report to the said justice in writing, under their hands and seals, or the hands and seals of a majority of them, within five days after said view, whether the said road be so out of order and repair as to be inconvenient or dangerous for travel, and if so found the said justice shall adjudge the said company to pay a fine of not less than twenty-five nor more than fifty dollars, payable to the road commissioners or supervisors of the townships in which the portion of the road so

within their township or borough, and whenever a complaint in writing, to any two justices of the same is made, that any part of a plank road or turnpike in their township or borough is out of repair, they shall, without delay, view and examine the road complained of; and if they find such complaint to be true, they shall give notice, in writing, of the defect to the toll-gatherer or person attending the gate nearest the place out of repair, and may, in their discretion, order such gate to be thrown open; but such justices shall not order such gate to be thrown open unless notice, in writing, has been served on the gate-keeper nearest the place out of repair, particularly describing such place at least three days previous to making such order. Notice of such order shall be served on such gate-keeper, and immediately thereafter the gate ordered to be thrown open shall be opened, nor shall it again be shut, nor shall any toll be collected thereat until the said two justices of the peace of the township or borough where such road out of repair is located, shall grant a certificate that such road is in sufficient repair, and that such gate ought to be closed. Whenever any part of such road is out of repair, and the gate nearest to the place out of repair is situated in an adjoining county, any two justices of the peace of the township or borough in such adjoining county where such gate may be, upon complaint made to them, in writing, shall view and examine the road complained of, and proceed thereon as provided in like manner as if the portion of road complained of was within the township where such gate was situated.

APPEAL FROM ORDER.—Whenever any toll-gate is ordered to be thrown open, as herein provided, or whenever such justices of the peace refuse to grant a certificate that the road complained of is in sufficient repair, the company owning such gate, or the gate-keeper

found defective is situate, and shall enter judgment therefor as other judgments for like amount are now entered: *Provided*, That said company shall have the same right of appeal to the Court of Common Pleas of the proper county as in other cases of judgments of like amount entered before such justice; *And provided further*, That no proceeding shall be commenced under this act, unless the complainant or some other person shall have given fifteen days' previous notice in writing to the gate-keeper nearest to whose gate the part or parts of the road complained of is situate, specifying particularly the part or parts of the road alleged to be out of repair and the nature of the defect alleged, and notifying him that unless it be repaired within fifteen days complaint will be made as herein provided.

SECTION 4. Constables to return defects in roads.—It shall be the duty of the constable of each township to make return to the Court of Quarter Sessions of the proper county of defects in turnpike and plank roads, in the same manner and to the same extent that they now make returns of defects in public roads; and the officers of every plank road or turnpike company, on indictment found on such return or information made by any citizen before a justice of the peace as in other cases, shall be liable to the same penalties for allowing defects in the turnpike or plank road under their control that road commissioners or supervisors now are for defects in public roads.

SECTION 5. Repeal.—Clause seven of section thirty of the act, approved April twenty-nine, eighteen hundred and seventy-four, entitled "An Act to provide for the incorporation and regulation of certain corporations," is hereby repealed as far as it applies to plank roads and turnpikes only.

attending the same in their behalf, may appeal from the order or decision of such justices to the Court of Common Pleas of the county where such justices reside, by delivering a statement, in writing, of their order or decision and of such appeal, verified by affidavit, to the prothonotary thereof; and such appeal shall be placed at the head of the list for the next term of said court, and disposed of as to law and justice shall appertain, without declaration or plea. The said appeal shall not be a *supersedeas* of the order to open the gate. If the court reverses the order or decision of the said justices, then such gate may be closed, but if it confirms the same, such gate shall not be closed until such justices of the peace grant a certificate that such road is in sufficient repair.

PENALTY FOR DISOBEYING JUSTICES' ORDER.—Every keeper of a gate ordered to be thrown open who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or delay any person in passing, or take or demand any toll from any person passing, shall, for each offence, forfeit the sum of ten dollars to the party aggrieved.

FEES.—To each justice of the peace who shall view a plank or turnpike road, upon complaint made to him, shall be allowed the sum of two dollars and fifty cents for each day spent by him in the performance of such duty; and if the road viewed shall be adjudged out of repair, such fees shall be paid by the company to which the road shall belong, otherwise they shall be paid by the party making the complaint. Such fee, when payable by the company, shall be paid by the toll-gatherer nearest that of the road adjudged out of repair, on demand, and out of the tolls received or to be received by him, and may be recovered, with costs, of such toll-gatherer if he neglects or refuses to make such payment. The provisions of this section shall apply to all turnpike roads in existence in this commonwealth governed and controlled by general laws.

Clause 8. PENALTIES AND COSTS—HOW RECOVERABLE.¹—In all cases of complaint made or suit instituted under the provisions of this act against any corporation, if the complainant shall fail to sustain his complaint or the plaintiff to sustain his suit, as the case may be, the corporation shall be entitled to recover costs, as in other cases, from the complainant or plaintiff, as the case may be, and in all cases where any corporation, which may have been chartered under and subject to the provisions of this act, shall be adjudged to pay any penalty or the costs of any proceedings authorized by this act, the party plaintiff or complainant shall have all the remedies for recovering of the same, with costs, against the said corporation that are provided for the recovery of debts or judgments of like amount in other

¹ Act 29 April, 1874, § 30, clause 8; P. L. 89.

cases ; and if the said corporation shall fail to make payment in any case within twenty days after final adjudication, the Court of Common Pleas of the proper county, on application of the plaintiff, or some other person in his behalf, shall direct sequestration, and appoint a sequestrator, who shall have like powers and be subject to all the regulations and requirements provided in the seventy-third and seventy-fourth sections of an act of the general assembly of this commonwealth, entitled "An Act relating to executions," passed June sixteenth, one thousand eight hundred and thirty-six :¹ *Provided*, That where the judgment is final before the justice, or is not appealed from as provided in this act, the complainant, before proceeding to sequestration, shall file in the Court of Common Pleas of the proper county a transcript of the proceedings and judgment before the justice, which transcript shall be entered of record in the said court as under existing laws for the filing and entering of transcripts of judgments in other cases, and from such filing and entering shall have the effect of a judgment originally entered in the said court.

Clause 9.—PENALTY FOR DEFRAUDING COMPANY.²—If any person or persons whosever, owning, riding in or driving any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, riding or leading any horse, or mule, or gelding, or driving any hogs, sheep or other cattle, shall therewith pass through any private gate or bars, or along or over any private passage way or other ground, near to or adjoining any gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid the payment of the toll or duty for passing through any such gate, or if any person or persons shall, with such intent, take off, or cause to be taken off, any horse, mare or gelding, or other cattle, from any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, or practice any other fraudulent means or device with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all and every or any of the ways or manners offending, shall for every such offence be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate or justice of the peace shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the company owning the turnpike road and the other half to the school fund of the township in which the offence was committed ; and if said fine or penalty, and the cost of the proceedings, be not paid, then such alderman, magistrate or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law.

¹ P. L. 775. These sections of the Act of 1836 were repealed by Act of 7 April, 1870 ; P. L. 58 ; Phila., etc., R. R. Co. Appeal, 70 Pa. 355.

² Act 29 April, 1874, § 30, clause 9, as amended by Act 30 April, 1879 ; P. L. 37.

OBSTRUCTING PASSAGE WHILE ATTEMPTING TO EVADE TOLL.¹—Any person or persons driving, riding in or driving any wagon, carriage or other vehicle, or riding or leading a horse or horses, or driving or leading any cattle or sheep, who shall wilfully obstruct or impede the free and safe passage of any other person or vehicle, in attempting to evade the payment of toll at any toll-gate of any road of any association or commission authorized by law to erect gates and charge and collect tolls, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10) or by imprisonment in the county jail for a term not exceeding thirty days, or either or both, at the discretion of the court.

*Clause 10. POWER TO ALTER TOLLS.*²—The legislature shall have power to alter the rate of toll fixed by this act, and the directors of any such company may lessen the same whenever they shall believe it necessary for the well-being of the corporations or the community at large.

VOTING POWER.³—In all elections or meetings of stockholders of any turnpike, plank road or bridge company, incorporated under any law of this commonwealth, every stockholder shall be entitled to one vote for every share of stock by him or her held in such corporation, to be cast either in person, or by proxy duly constituted by power of attorney in writing, attested by one or more subscribing witnesses.

AMENDMENT OF CHARTERS OF TURNPIKE COMPANIES.⁴—Any turnpike road company, duly incorporated within the state of Pennsylvania, that shall be desirous of improving, amending or altering the articles and conditions of the instrument upon which said corporation is respectively formed and established, it shall and may be lawful for such corporation to specify the improvements, amendments or alterations which are or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated, as aforesaid; when, if the said court shall be of the opinion such alterations are or will be lawful and beneficial, it shall be the duty of said court to direct said writing to be filed in the office of the prothonotary of said court, and also direct notice to be inserted in one newspaper printed in the proper county for at least three weeks, setting forth that an application has been made to said court for such alteration, amendment or improvement of the charter of said cor-

¹ Act of 4 June, 1879; P. L. 85.

² Act of 29 April, 1874, § 30; P. L. 90.

³ Act 11 June, 1879; P. L. 139.

⁴ Act 4 June, 1879, § 1; P. L. 91. See the General Amendment Act of 13 June, 1883; P. L. 122, *supra*, p. 56, 57.

poration ; and if no sufficient reason is shown to the contrary, it shall be lawful for said court, at the next term thereafter, to decree and declare by their order endorsed on said instrument, attested in the usual manner by the prothonotary under the seal of said court ; and after decree is made and said amendments are recorded in the office for recording of deeds in said county, the same shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established, to all intents and purposes as if the same had originally been made part thereof.

FEES AND EXPENSES—EVIDENCE—ACCEPTANCE OF STATE CONSTITUTION.¹—The usual fees allowed by law for equal or similar services, shall be received by the respective county officers under the provisions of this act ; and all the expenses of procuring said alterations or amendments and recording the same, shall be borne by the corporation applying therefor ; and after said alterations and amendments shall be recorded as before directed, the same shall be duly certified to be recorded and delivered over to the applicants ; and a copy of the record, duly certified, shall be at all times as good evidence as the original might or could be : *Provided*, That this act shall not apply to any such corporation, until it shall have filed its acceptance of the provisions of the new constitution with the said court, which said acceptance shall be recorded in the office for the recording of deeds in said county.

ABANDONMENT OF TURNPIKE OR PLANK ROAD COMPANIES.²—Where any turnpike or plank road has been abandoned, in whole or in part, for not less than five years, the portion so abandoned, if not kept in proper repair by the township authorities, shall, upon due application to the proper court, after hearing, and decree that the road has not been kept in proper repair, revert to the owners thereof in fee simple, or if kept in proper repair by the township authorities, shall be subject to the same uses as other township roads, and may be occupied or appropriated like them under the right of eminent domain.

CONDEMNATION OF TURNPIKES, ROADS OR HIGHWAYS.³—Whenever twenty-five or more resident taxpayers of any county, in this commonwealth, shall petition the Court of Quarter Sessions of their county representing that any turnpike, road or highway, heretofore or hereafter constructed, upon which tolls are charged the traveling public under any general or special law, is located wholly or in part in their county, and that it would be for the best interests of the people of their county for such turnpike, road or highway, or any part thereof, to become a public road, free from tolls and toll-gates,

¹ Act 4 June, 1879, § 2 ; P. L. 91.

² Act 11 June, 1879 ; P. L. 126, § 1.

³ Act 2 June, 1887, § 1 ; P. L. 306.

it shall be the duty of such Court of Quarter Sessions to appoint a jury of view, consisting of five reputable citizens of the petitioners' county, to view and condemn such turnpike, road or highway, or part thereof, for public use, free from tolls and toll-gates, and to assess the damages to which the owner or owners thereof may be entitled therefor: *Provided however*, That notice of the intended application for the appointment of such jury of view shall be published in two newspapers of general circulation in the petitioners' county, at least thirty days previous to the time of making the application, and that like notice in writing shall be served upon the county commissioners or proper municipal authorities, at least ten days before making such application: *And further provided*, That such petitioners shall serve or cause to be served upon the county commissioners or proper municipal authorities a written notice of the time and place of the meeting of such jury of view, at least five days before such meeting shall be had.

¹ The said Court of Quarter Sessions may, in its discretion, appoint a competent stenographer to keep a faithful record of all proceedings before the viewers and to furnish a full copy of his notes to be attached to and form a part of the record; and, in addition to the five viewers provided for in the first section of this act, shall appoint a reputable person, learned in the law, who shall preside at all meetings of the viewers, to be known as a master and have the power to determine the admissibility of evidence, to issue writs of subpoena to compel the attendance of witnesses and the production of papers, and instruct the viewers upon matters of law, to which exceptions may be taken for the purpose of review, but shall not have a vote on any question of fact or value.

Before entering upon the discharge of his duties of master, he shall be sworn or affirmed, by the judge appointing him or by the clerk of the Court of Quarter Sessions, to discharge his duties faithfully, impartially and according to the best of his learning and ability; after being duly sworn or affirmed, he shall, at the first meeting of the viewers, swear or affirm the stenographer to the faithful discharge of his duties, and thereupon shall, separately, swear or affirm each viewer on his *voir dire* touching the competency to serve, his impartiality and disinterestedness, and a record thereof shall be made, and upon objection then made by any person in interest, the court shall have the power, in its discretion, on cause shown, to revoke the appointment of any one or all of the viewers, and appoint others in lieu thereof; when the five viewers are found to be disinterested and qualified to serve, the master shall administer an oath or affirmation to each viewer to perform his duties with fidelity, impartiality and according to his best judgment.

² The members of such jury of view and the master, having been

¹ Act 2 June, 1887, § 2; P. L. 306.

² *Id.*, § 3.

duly sworn or affirmed as provided for in the preceding section of this act, shall organize, three members thereof, not including the master, shall constitute a quorum, with power to meet and perform the duties of such jury of view, and it shall be the duty of such jury of view to hear at least six witnesses at the request of the petitioners for or of those opposed to making any turnpike, road or highway free from tolls and toll-gates, and a like number of witnesses on behalf of the company owning or operating such turnpike, road or highway : *Provided however*, That such jury of view may report in favor of petitioners, if such jury of view decree it for the best interests of the people of their county, without hearing any witnesses, if no request is made by any party to have witnesses examined.

¹ Each jurymen, serving on any such jury of view, shall be allowed the sum of two dollars and fifty cents for each day necessarily employed thereon, and the master's compensation shall be fixed by the court, and warrants shall be drawn by the county commissioners of the proper county on the treasurer of their county for the payment of the amounts to which such jurymen and master shall be entitled under this act, as well as the stenographer, whom the court shall appoint.

² Such jury of view shall within thirty days after the appointment thereof, unless, in the discretion of the court, the time be extended, report to the court appointing the same, as follows :

First. The names of the members of the jury and master who attended each meeting thereof ;

Second. The number, names, residences and ages of the witnesses examined before a jury ;

Third. Whether or not the entire turnpike, road or highway is located in the petitioners' county, and if not, what proportion is so located, and whether or not it is for the best interests of the people of the petitioners' county for the turnpike, road or highway, or a part thereof, to be made free from tolls and toll-gates, and whether or not the same is condemned, by such jury of view, for public use, free from tolls and toll-gates, and if the whole of said turnpike, road or highway lying in the petitioners' county is not condemned, but only a part thereof, then such part shall be clearly designated and described ; and to which report shall be attached a map or draft of said turnpike road showing definitely the point between which the same is condemned for public use for the turnpike, road or highway, or part thereof, if the same shall be condemned for public use as aforesaid.

³ Exceptions may be filed by any party aggrieved to the report of such jury of view, within thirty days from the time such report is filed, which exceptions shall be heard by the court in which such re-

¹ Act 2 June, 1887, § 4 ; P. L. 306.

² Id., § 5.

³ Id., § 6.

port is filed, and such court, after considering such exceptions, may refer the report back to the jury of view with instructions to take any further proceedings or testimony as the court may deem necessary and proper, or may set the same aside, or may confirm such report; and if no exceptions are filed to any such report, unless appeal is taken as provided for in section eight of this act (and in such case the final confirmation of the proceedings shall await the result of the appeal from the assessment within thirty days from the time of filing thereof), then such report may be confirmed or dismissed by the court. Any party aggrieved by the action of the court may remove the proceedings to the Supreme Court by writ of *certiorari*, within twenty days after final confirmation or disapproval.

¹ Immediately after any Court of Quarter Sessions shall confirm any report of such jury of view, condemning any turnpike, road or highway, or part thereof, for public use, free from tolls and toll-gates, the collection of tolls of every kind on such turnpike, road or highway, or part thereof, shall hereafter cease, and, thereupon, all toll-gates upon the part so condemned shall be forthwith removed therefrom; and, thereupon it shall be the duty of the county commissioners of the proper county to draw a warrant or warrants on the treasurer of their county for the payment of any damages which shall be assessed, as aforesaid, against their county for any turnpike, road or highway so condemned in their county, which warrant or warrants shall be made payable to the party or parties legally entitled to such damages.

² An appeal to the Court of Common Pleas of the proper county, from the assessment of damages, may be taken by the corporation owning or taking tolls on said turnpike, road or highway road, or by the county commissioners, or by the proper municipal authorities, or by twenty-five citizens of the petitioners' county, within thirty days after the approval of the report, and, thereupon, the court shall direct an issue, which shall be tried by a jury, according to the course of the common law as regulated by existing statutes, and judgment entered on the verdict, and the record thereof shall be remitted to the proper Court of Quarter Sessions for further action upon the whole case: *Provided however*, That the said judgment shall be reviewable by the Supreme Court upon writ of error as in other cases.

³ Such appeal shall be accompanied by an affidavit made by an officer of said corporation, or by one of the county commissioners, or municipal officers, or by one of the twenty-five citizens, that the appeal is not taken for the purpose of delay, but because the affiant firmly believes that injustice has been done, and, after verdict, such order shall be made in relation to the costs as to the court shall appear just.

¹ Act 2 June, 1887, § 7; P. L. 306.

² Id., § 8.

³ Id., § 9.

¹ If only a part of any such turnpike, road or highway shall be condemned, nothing herein contained shall be taken to abridge the right of the company owning or operating such turnpike, to maintain toll-gates and collect tolls upon the remaining parts of their road not condemned as aforesaid: *Provided*, That it shall not be lawful so to condemn any portion of such turnpike, road or highway, unless such portion extend to one of the terminal points of such turnpike, road or highway, and unless such portion be a continuous portion.

² That when any turnpike, or portion thereof, shall have been condemned, under the provisions of this act, for public use, free of tolls or toll-gates, and the assessment of damages therefor shall have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper city, township or district, as other public roads or streets therein are by law repaired and maintained.

39. Ferry, Wharf and Bridge Companies.

CHARTER.³—The charter of a ferry, wharf or bridge company shall also state—

I. The stream over or on which the same is proposed to be erected.

II. The place and county or counties of its location.

III. Its distance from any other wharf, bridge or ferry over or on the same stream which shall have been before that date incorporated under the laws of this commonwealth.⁴

BRIDGE AND FERRY COMPANIES—MANAGEMENT.⁵—All bridges and ferry companies incorporated under this statute, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, be governed, managed and controlled as follows :

*Clause 1. PROCEEDINGS TO PURCHASE OR CONDEMN PROPERTY.*⁶
—Before the directors of any such corporation shall proceed to build

¹ Act 2 June, 1887, § 10; P. L. 306.

² *Id.*, § 11.

³ Act 29 April, 1874, § 31, as amended by Act 17 April, 1876; P. L. 34.

⁴ Since the Act of 17 April, 1876 (P. L. 34) there is no restriction as to distance from another ferry, the prior restriction of three thousand feet contained in the Act of 1874 being thereby repealed: *Re York Haven Ferry Co.*, O. A. G., February 4, 1886. See *infra*, p. 82, n. 2. The legislative grant of the franchise of a ferry gives only the right to maintain a ferry and to take tolls; it does not give the right to make a landing upon the property of a private person on upon a highway: *Pittsburgh & Lake Erie R. R. Co. v. Jones*, 111 Pa. 204; see *infra*, clause 1.

⁵ Act 29 April, 1874, § 31, as amended by Act 25 May, 1887; P. L. 268.

any such bridge or ferry, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge or ferry, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners,¹ but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act.² The said bridge or ferry shall be so constructed as not to interfere with the free navigation of said creek or river.³

*Clause 2. TOLL.*⁴—When the said corporation shall have erected and completed a bridge over any creek or river, under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates and to demand and receive tolls for crossing said bridge, at such rates as the president and directors thereof shall, from time to time, determine, not exceeding the rates following, namely: For every score of sheep or swine, eight cents; for every score of horned or muley cattle, twenty-five cents; for every mule or horse, driven or led, five cents; for every horse or mule, laden or unladen, with rider, five cents; for every two-wheeled vehicle and one horse, six cents; the same with two horses, ten cents; for every four-wheeled vehicle, with one horse, ten cents; for every four-wheeled vehicle, with two horses, fifteen cents; for either of the last named vehicles, with four horses, twenty cents; for every foot passenger, two cents: *Provided*, That any bridge, not wholly, or in part, within the limits of any city of the

¹ The amending Act of 17 April, 1876; P. L. 34, provided as follows:

"Whenever any fishing right or other easement is alleged to exist at, upon or about the place where such wharf is about to be erected or constructed, said directors may contract with the owner or owners of such fishing right or easement for settlement of damages to the same."

The amending Act of 1887 amended this section of the Act of 1874 as appearing in the statutes for the latter year disregarding the fact that this section had been amended by the Act of 1876. Hence this provision of the Act of 1876 is omitted in the Act of 1887.

² *Supra*, p. 50-54. By the Act of 14 May, 1874, P. L. 164, it is provided:

"Hereafter it shall be the duty of all persons appointed in the several counties of this commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or bridge, to endeavor to procure from the persons over whose lands such location may be made releases from all claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and it shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof, signed by a majority of their number, and return the same together with all releases obtained, to the Court of Quarter Sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this commonwealth."

³ That is, obstructing the navigation as slightly as the nature of the work will permit: *Whitaker v. Canal Co.*, 87 Pa. 34; *Commonwealth v. R. R.*, 27 Pa. 365.

⁴ Act 29 April, 1874, § 31, as amended by Act 6 May, 1887; P. L. 92.

first or second class within this commonwealth, that shall hereafter be constructed or reconstructed, and the cost whereof shall be increased beyond the minimum by reason of the demands and requirements of navigation, the corporation owning the same may demand and receive tolls, not exceeding fifty per centum in excess of the above rates in any case, where such increased rates do not produce a net revenue in excess of six per centum per annum upon the capital stock of such corporation: *Provided further*, That no such increased tolls shall be charged in any case until the same shall have been authorized by the Court of Quarter Sessions of the proper county, or if a bridge be located over a stream dividing counties, then by the Court of Quarter Sessions of the county wherein the office of the company may be situated, and in all cases said corporations shall cause to be put up and kept in some conspicuous place at the gate of said bridge a list of the rates of toll: *And provided further*, That all children going to and from school shall have free passage.

Clause 3. PENALTY FOR EXCESSIVE TOLLS OR DEFECTIVE BRIDGE.¹—If the said corporation, or any person employed for it, shall collect or demand any greater rate or prices of passing over said bridge, than what is prescribed in the list of tolls put up at the gate as aforesaid, or neglect to keep said bridge in repair, her or they shall forfeit for every such offence the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half to be paid to the county and the other half to the person who may sue for the same.

Clause 4.—ACCOUNTS—DIVIDENDS.²—Said corporation shall keep a just account of all moneys received by their several collectors of tolls for crossing said bridge; and after deducting all contingent costs and charges, and such proportion of the income as may be sufficient for a fund to provide against the decay, the repairing and rebuilding of the said bridge that time and accident may render necessary, they shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice personally or by advertisement of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly, in ten days thereafter, or as soon thereafter as the same shall be demanded.

Clause 5. PROHIBITED ACTS—PENALTIES.³—If any person or persons shall wilfully pull down, break or destroy, with intent to injure, any part of parts of the said bridges, or any toll-house, gates, bars or other property of the said corporation, erected for the use

¹ Act 29 April, 1874, § 31, as amended by Act 17 April, 1876; P. L. 34.

² Id.

³ Id.

of said bridges, or shall wilfully deform or destroy the letters or figures in any list of the rates of toll, affixed in any place for the information of passengers, or shall wilfully or maliciously obstruct or impede the passage in or over the said bridges, or any part or parts thereof, he or she, or they, so offending, shall each of them forfeit and pay for each and every such offence to the said corporation, the sum of ten dollars, to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted cigar or pipe, or of carrying fire in any manner whatsoever, over said bridge, except in a lantern or in some vessel secured so that the probability of setting fire to said bridges shall be fully prevented, or shall discharge any pistol or gun, or any fire-arms, on or near said bridges, he, she or they so offending shall forfeit and pay to the said company the sum of five dollars each, with all other damages sustained to said bridges, for every such offence, to be recovered as aforesaid; or if any person or persons shall evade the payment of any toll or duty for passing said bridges, or ride or drive his or their horse or horses on or over said bridge in a faster gait than a walk, he, she or they so offending, shall forfeit and pay to the said corporation the sum of five dollars for every such offence, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the said offences, unless commenced within thirty days after it shall be known who committed said offence, and he, she or they so offending, shall remain liable to action at the suit of said corporation for such wrongs, if the sums herein mentioned be not sufficient to repair and satisfy said damage.

*Clause 6. LICENSE OF WHARF COMPANIES IN PHILADELPHIA.*¹
—No wharf company within the jurisdiction of the board of wardens, for the port of Philadelphia, shall have the right to exercise its corporate franchises under this act until it has been licensed by said board of port wardens, and complied with the provisions of an act entitled “An Act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned,” approved March twenty-ninth, eighteen hundred and three, and its supplements.²

*SALE OF PROPERTY.*³—It shall be lawful for any bridge company, with the assent of the holders of not less than two-thirds of its capital stock, to sell or dispose of its property to any other corporation, and said corporation so purchasing shall have full power, in accordance with the purposes of its charter, to use the property so purchased for the purpose designated in the charter under which said property was built.

¹ Act 29 April, 1874, § 31, as amended by Act 17 April, 1876; P. L. 34.

² 4 Sm. Laws, 73.

³ Act 12 June, 1879; P. L. 173.

FERRY AND WHARF COMPANIES—ADDITIONAL POWERS.¹—Any ferry company incorporated as aforesaid, shall have the right and power to erect and maintain a ferry, either of steam power or otherwise, across any of the streams or waters of this commonwealth, subject to the right of prior occupants;² and any ferry or wharf company may take and receive such charges for occupancy, storage and use, and such tolls and freights for the passage of persons, vehicles, animals and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the schedule of charges and toll-sheet submitted by any such corporation, and approve the same or lessen or increase the same as seems just and proper.

VOTING IN BRIDGE COMPANIES.³—In all elections or meetings of stockholders of any turnpike, plank road or bridge company, incorporated under any law of this commonwealth, every stockholder shall be entitled to one vote for every share of stock by him or her held in such corporation, to be cast either in person, or by proxy duly constituted by power of attorney in writing, attested by one or more subscribing witnesses.

WHEN PRIVATE BRIDGE MAY BE CONDEMNED FOR PUBLIC USE.⁴—When any turnpike road company, bridge company or other corporation has heretofore erected or may hereafter erect by authority of general or special laws, any bridge over a river, creek or rivulet crossing any road or highway on which the public are required to travel, and such company or corporation is authorized to charge and take tolls for the use and crossing of such bridge, and at least twenty residents and taxpayers of the county where such bridge is situated, shall petition the Court of Quarter Sessions of said county, or if said bridge be located on a river, creek or rivulet dividing two counties, then upon the petition of at least twenty residents of each county representing that the said bridge is necessary to the accommodation of public travel, and that the payment of tolls over such bridge is burdensome to the traveling public, and praying that the same shall be taken as a county bridge, the said court shall appoint

¹ Act 29 April, 1874, § 32, as amended by Act 17 April, 1876, § 8; P. L. 36.

² The restriction of three thousand feet imposed by the Act of 29 April, 1874, § 31, as amended by the Act of 14 March, 1876, P. L. 6, has been held by the deputy attorney general to be repealed by this Act of 17 April, 1876, although the opinion does not contain any reference to the Act of 14 March, 1876 (P. L. 6): *Re York Haven Ferry Co.*, O. A. G., February 14, 1886. A legislative grant to individuals to use public rights for private gain will not be deemed exclusive unless plainly so declared; and a supplementary act not founded upon any new consideration, declaring such prior privileges to be exclusive, will not create a contract binding upon the state: *Johnson v. Com.*, 87 Pa. 184.

³ Act 11 June, 1879; P. L. 139.

⁴ Act 8 May, 1876, § 1; P. L. 181.

six disinterested persons to view the said bridge and assess the damage, if any, which such company or corporation may sustain by the taking of the same, and make report of their proceedings to the respective court at the next term thereof: *Provided*, That notice shall be given in at least one newspaper published at the county seat of such intended application for at least three weeks before the presentation of such petition: *Provided further*, That when two or more toll-bridges cross the same stream and lead to the same streets or general thoroughfares, and are situated within one-fourth mile of each other, no purchase of any one of said bridges shall be made under this act, unless the assent of the stockholders of the remaining bridge or bridges be first had at a meeting called for that purpose.

¹ The viewers so appointed shall make report at the next term of the said court, which said report shall state particularly: *First*. Who of them were present at the view. *Second*. Whether they were severally sworn or affirmed. *Third*. Whether the bridge be necessary as a free bridge for public accommodation and the payment of tolls on the same is an unjust burden on the traveling public, and the people of the township or townships where the same is located. *Fourth*. The amount of damages, if any, sustained by such company or corporation by reason of the taking of the same.²

³ If upon the report of the viewers it shall appear to the court and grand jury that such bridge ought to be declared a county bridge, and is necessary for the public accommodation, and that payment of tolls thereon is an unjust burden on the traveling public and the people of the township or townships near where the same is located, the report shall be approved, and the damages shall be payable out of the county treasury, and the said bridge or bridges shall be taken possession of by the county commissioners, and shall thenceforth be declared a county bridge, and all tolls for travel thereon shall cease: *Provided*, That in case one of the viewers fail to attend at the time and place of meeting, the viewers present, if five or more in number, may view and make the report.

⁴ In their inquiry into the propriety of approving and confirming any report under this act, it shall be the duty of the court and grand jury, if requested, to hear and examine witnesses for and against the same.

⁵ Bridges over any river, creek or rivulet, being on the line of adjoining counties, shall be taken in the manner provided in this act in the case of any other county bridges, except that the Court of

¹ Act 8 May, 1876, § 2; P. L. 131.

² Rules for estimating the measure of damages were declared in Montgomery Co. v. Schuylkill Bridge Co., 110 Pa. 54.

³ Act 8 May, 1876, § 3, as amended by Act 3 May, 1878; P. L. 41.

⁴ Act 8 May, 1876, § 4; P. L. 132.

⁵ Id., § 5, as amended by Act 3 May, 1878, § 2; P. L. 42, as further amended by Act of 11 April, 1889; P. L. 29.

Quarter Sessions of each county shall appoint three of the viewers, and that a report, as aforesaid, be made to the said courts respectively ; and the said courts shall, together with the grand jury and commissioners of the respective counties, in all other respects, have and exercise concurrent jurisdiction and discretion therein : *Provided*, That the damage for the appropriation of any such bridge shall be borne by said counties equally : *And provided*, That this act shall not be construed to repeal any law heretofore passed in relation to purchase of any particular bridge by any county.

¹ That the company owning any such bridge as mentioned in said act, or the county, shall have the right to appeal from any award of damages, made under the provisions thereof to the Court of Common Pleas in which such bridge or part thereof is situated, under such regulations for bringing the matter to a trial in due course of law by a jury, as the said court may prescribe.

² That after appeal entered as aforesaid, the case shall be removed on application of either party, for trial in some other county to be determined by the court to which the appeal was taken.

POWERS OF FOREIGN COMPANIES.³—It shall and may be lawful for any company incorporated under the laws of any other state for the establishment, maintenance and continuance of a ferry, or for the maintenance and continuance of a bridge, between this state and any other state, upon or over any river flowing between said states, to erect and maintain piers, offices, warehouses and all other buildings and structures necessary for the maintenance of such ferry or bridge and conducting the freight and passenger business to be moved thereby, and to take, have and hold, in this state, real estate necessary and proper for the purpose of such ferry or bridge, and for such piers, offices, warehouses, buildings and structures, or either, and to mortgage, lease or convey the same, or any part thereof : *Provided*, That nothing herein contained shall be deemed to prevent or relieve any real estate, taken or held by any such corporation under the provisions of this act, from being taxed in like manner with other real estate in this commonwealth, and the title to any real estate in this commonwealth now held by or in trust for any such corporation for the purposes aforesaid is hereby confirmed, with the same effect as if the said real estate had been purchased, held or owned under the provisions of this act.

¹ Act 3 May, 1878, § 4 ; P. L. 42.

² *Id.*, § 5.

³ Act 6 June, 1887 ; P. L. 352.

40. Telegraph Companies.

CHARTER.¹—The charter for the incorporation of a company to maintain a telegraph line, shall, in addition to what is hereinbefore required, also state—

I. The general route of the line of telegraph.

II. The points to be connected.

Clause 1. CONSTRUCTION OF LINE.—Such corporation shall be authorized, when incorporated as hereinbefore provided, to construct lines of telegraph along and upon any of the public roads, streets, lands or highways, or across any of the waters within the limits of this state, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines, but the same shall not be so constructed as to incommode the public use of said roads, streets or highways,² or injuriously interrupt the navigation of said waters; and this act shall not be so construed as to authorize the construction of a bridge across any of the waters of this state.

*Clause 2. CONDEMNING PROPERTY.*³—In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of the owner or owners, no such agreement can be made, for the right to enter upon lands or premises for the purposes named in this section, the company shall tender a bond, or have the same filed in the manner provided in the forty-first section of this act, and proceedings shall be had as therein set forth.⁴

*Clause 3. RIGHT TO CONNECT WITH OTHER LINES.*⁵—The said telegraphic corporation shall have the right to connect its lines of telegraph with any other line operating within this state; and it shall be the duty of any corporation or person owning any other telegraph line doing business within this state, to permit such connection, and to receive dispatches from and for other telegraph lines and corporations, and from and for any individual, and on payment of their usual charges to individuals for transmitting dispatches, as established by the rates and regulations of such telegraph line, to

¹ Act 29 April, 1874, § 33; P. L. 92.

² *City v. Telegraph Co.*, 2 Weekly Notes Cas. 455; 33 Leg. Int. 129; *Telegraph Co. v. Wilt*, 1 Phila. Rep. 270. Such company is subject to the payment of reasonable license fees imposed by the municipality: *Western Union Telegraph Co. v. Philada.*, 22 Weekly Notes Cas. 39.

³ Act 29 April, 1874, § 33; P. L. 92.

⁴ *Supra*, p. 50-54.

⁵ Act 29 April, 1874, § 33; P. L. 92.

transmit the same with impartiality and good faith, under penalty of one hundred dollars for every neglect or refusal so to do, to be sued for as debts of like amount are by law recoverable, and to be recovered with costs of suit in the name and for the benefit of the person or persons sending or desiring to send such dispatch.¹

Clause 5. CHARGE FOR DELIVERING MESSAGES.²—The charge by all telegraph companies organized under this act, and those accepting the provisions thereof, for the transmission of any telegraphic dispatch, shall include the charge for the delivery thereof, and no extra or additional charge shall be made for such delivery.

WIRE PASSING OVER PROPERTY—PRESCRIPTION.³—Whenever any wire or cable used for any telegraph, telephone, electric light, or other wire, or cable for electric purposes, is or shall be attached to, or does or shall extend upon, or over any building or land, no lapse of time whatsoever shall raise a presumption, or justify a prescription of any perpetual right to such attachment or extension.

Clause 4. ACQUISITION OF COMPETING LINES PROHIBITED.⁴—No such telegraph company shall be consolidated with or merged in any other company owning a competing line of telegraph, nor shall the stock or bonds of any such telegraph company, to an amount sufficient to control the same, be held or owned by any company owning a competing line of telegraph, nor shall any company owning a competing line acquire, by purchase or otherwise, any other competing line of telegraph.

PENALTY FOR CONSOLIDATION.⁵—Whenever any telegraph corporation, telegraph association or telegraph company, chartered for telegraph purposes, and owning and controlling a telegraph line in this state, shall consolidate with any other telegraph corporation, telegraph association, or telegraph company, chartered for telegraph purposes and owning and controlling a competing telegraph line, the said competing telegraph lines and all franchises, and property connected therewith, for the operation of the same, within this state, shall be forfeited to and become the property of this commonwealth.

PENALTY FOR CONTROLLING COMPETING COMPANY.⁶—Whenever any such corporation, association or company, owning and con-

¹ This applies equally to telephone companies: *Bell Telephone Co. v. Com.*, 17 Weekly Notes Cas. 505; see *Com. v. Penna. Telephone Co.*, 42 Leg. Int. 180.

² Act 29 April, 1874, § 33; P. L. 92.

³ Act 19 April, 1883; P. L. 13.

⁴ Id.; also Constitution of Pennsylvania, Art. XVI, § 12.

⁵ Act 5 June, 1883, § 1; P. L. 84.

⁶ Id., § 2.

trolling a line of telegraph, shall hold a controlling interest in the stock or bonds of any such other telegraph corporation, association or company, owning a competing line of telegraph, or shall acquire by purchase or otherwise any other competing line of telegraph, the stock or bonds so held, and the telegraph line, together with all franchises so purchased or otherwise acquired, shall be forfeited to and become the property of the commonwealth.

HOW FORFEITURE DECREED—PROCEEDINGS.¹—Whenever any telegraph line, franchises, property, stocks, bonds become forfeited and escheat to the commonwealth, under the first and second sections of this act, such forfeiture and escheat may be decreed under proceedings by *quo warranto* in any Court of Common Pleas of this state, from which decree any party interested may appeal to the Supreme Court at any time within six months after such decree, and not afterwards: *Provided*, That any holder of stock or bonds of any such telegraph company, who shall have been opposed to the consolidation with or sale to the competing company, or shall not have assented thereto or acquiesced therein, may be admitted as a co-defendant in such *quo warranto* proceedings, and upon proof of such opposition or want of assent and acquiescence to the satisfaction of the court, it shall be lawful for the court to so mould the decree as to be without prejudice to the right of such innocent stockholder to hold his stock; and in case of an innocent bondholder that he shall be entitled to such *pro rata* share of the proceeds of the sale by the commonwealth, as hereinafter provided, as his bonds shall bear to the whole amount outstanding; but in no case to exceed the par value of his bonds and accrued interest thereon.

SALE—DEED.²—After a final decree of the court establishing the forfeiture and escheat to the commonwealth, as provided in section three of this act, the auditor general shall expose to sale by public auction, at the capitol, in Harrisburg, the telegraph line, franchises, property, stocks and bonds so escheated, after notice of said sale by publication for four successive weeks in at least one newspaper in each county through which the escheated telegraph line passes, and at said sale the said telegraph line, franchises, property, stocks and bonds shall be sold to the highest and best bidder for cash: *Provided*, That no such corporation, association or company, owning or operating a competing line of telegraph, shall become a purchaser at said sale; and upon the payment of the price at which the same shall be thus sold, and the filing with the secretary of state of the certificate of the state treasurer, that the money has been so paid, together

¹ Act 5 June, 1883, § 3; P. L. 84. The Common Pleas of Dauphin County has recently decided that this proceeding is not "a suit of a civil nature," and hence cannot be removed by foreign corporations into the Circuit Court of the United States: *Com. v. Western Union Tel. Co.*, (May 6, 1889.)

² Act 5 June, 1883, § 4; P. L. 84.

with the certificate of the auditor general setting forth the fact and terms of the sale, a deed for the telegraph line, franchises, property, stocks and bonds so sold, shall be executed in the name and under the seal of the commonwealth, to the purchaser or purchasers, signed by the governor and attested by the secretary of state, which deed shall vest in the purchaser or purchasers a valid and sufficient title thereto.

POWERS OF COURT TO ASCERTAIN FACTS.¹—The said court shall have power to summon the officers of any such corporations, associations or companies, or either of them, by subpoena, citation or otherwise, as the said court shall direct, to appear before said court and produce all of its or their books and papers, and to examine them upon oath, to ascertain whether they are or any of them have violated the twelfth section of the sixteenth article of the constitution of this commonwealth, and shall have power to enforce their appearance by attachment, as in case of other witnesses, or the said court may direct to be filed a bill of discovery in the said court against the officers, directors or trustees of any such corporations, associations or companies or either of them, which the defendants therein shall answer under the compulsion usual in such cases, and the evidence so taken and their answers may be used, in the said proceedings, to assert the rights of the commonwealth.

PURCHASERS CREATED CORPORATION.²—The purchaser or purchasers for or on whose account any telegraph line, franchises or property shall be purchased from the commonwealth, as authorized by this act, where an organization is effected and a certificate filed as required in the proviso hereto, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, claim and demand in law and equity of, in and to such telegraph line, with its appurtenances and with all the rights, powers, immunities, privileges and franchises of the said corporation, association or company owning the said telegraph line, property and franchises at and immediately before the forfeiture thereof under sections one and two of this act. **ORGANIZATION—POWERS.**—And the person or persons, for or on whose account any such telegraph line, property and franchises shall be purchased, shall meet, within thirty days after the delivery of the deed from the commonwealth, public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper, published in the city of Harrisburg, and organize said new corporation by electing a president and board of six directors, (to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter, on the said day a like election

¹ Act 5 June, 1883, § 5; P. L. 84.

² Id., § 6.

for a president and six directors shall be held to serve for one year,) and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each; and may then, or at any time thereafter, create and issue preferred stock to such an amount, and on such terms, as they may deem necessary; and from time to time issue bonds, at a rate of interest not exceeding seven per centum, to any amount not exceeding their capital stock and to secure the same by one or more mortgages upon the telegraph line, property and franchises, or on any part or parts thereof: *Provided*, That the person or persons for or on whose account the purchase is made, shall organize by the election of a president and a board of directors as above provided within three calendar months after the delivery of the deed from the commonwealth, and within one calendar month after such organization make a certificate thereof under its common seal, attested by the signature of its president, specifying the date of such organization, the corporate name adopted, the amount of capital stock and the names of the president and directors, and transmit the said certificate to the secretary of state at Harrisburg, to be filed in his office and there remain of record, and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.

INCORPORATION OF ADDITIONAL TELEGRAPH COMPANIES.¹—Corporations of the second class may be formed and created in the manner provided for by the act to which this is a supplement, and with all the rights and powers therein granted, for the purpose of constructing, maintaining and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal and otherwise, for general business, and for police, fire alarm or messenger business, or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.

² The business of such corporation may be wholly within or partly within and partly without the limits of any city, borough or township in this state, or partly in any other state or states.

CHARTER.³—That in lieu of the requirements of the first paragraph of the thirty-third section of the act to which this is supplementary, approved April twenty-ninth, one thousand eight hundred and seventy-four, the charter for the incorporation of companies under the provisions of this act shall state:

¹ Act 1 May, 1876, § 1; P. L. 90.

² *Id.*, § 2.

³ *Id.*, § 3.

First. In what counties in this state it is proposed to carry on business.

Second. In what other states it is proposed to carry on business.

CONSENT OF MUNICIPALITY.¹—That before the exercise of any of the powers given under this act, application shall be first made to the municipal authorities of the city, town or borough, in which it is proposed to exercise said powers, for permission to erect poles, or run wires on the same, or over, or under any of the streets, lanes or alleys of said city, town or borough, which permission shall be given by ordinance only, and may impose such conditions and regulations as the municipal authorities may deem necessary.

41. Water, Light, Heat, Fuel and Power Companies.

² Companies incorporated under the provisions of this statute for the supply of water to the public, or for the manufacture and supply of light, heat and fuel, or any of them, by any process of manufacture,³ shall, unless otherwise provided by this act, from the date of the letters-patent creating the same, have the powers and be managed, governed and controlled as hereinafter provided.

CAPITAL STOCK.⁴—Corporations of the character provided for herein shall be entitled to have a capital stock not exceeding five million dollars.

⁵ Corporations created under and by virtue of the said act⁶ for the purpose of supplying water to the public in cities of the first and second class, shall have the right to increase the amount of their capital, from time to time to such amount as shall be found requisite and exigible for the purposes thereof: *Provided*, That the amount of capital stock, so authorized, shall not exceed twenty millions of dollars.⁷

¹ Act 1 May, 1876, § 4; P. L. 90, as amended by Act 25 June, 1885; P. L. 164.

² Act 29 April, 1874, § 34, as amended by Act 2 June, 1887, § 1; P. L. 311.

³ The article furnished must be the result of a manufacturing process, and hence this section does not authorize the incorporation of companies for supplying natural gas: *Emerson v. Com.*, 108 Pa. 111; such companies are now governed by Act 29 May, 1885; P. L. 29.

⁴ Act 2 June, 1887, § 4; P. L. 313. The Act 9 May, 1889, P. L. 181, provides that the capital stock of water companies shall not exceed two million dollars.

⁵ Act 25 May, 1887; P. L. 269.

⁶ The Act of 29 April 1874.

⁷ See *ubi supra*, n. 4.

Clause 1. POWERS OF HEAT, LIGHT AND FUEL COMPANIES.¹—

Where any such company shall be incorporated for the supply of heat, light and fuel, or any of them, by any process of manufacture, it shall have authority to supply such heat, light or fuel, or any of them, to the territory named in its articles of association, (which shall never cover more than a single county,) and to such persons, partnerships and corporations residing therein, or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and shall have the power of eminent domain to appropriate property, so far as may be necessary, to enable it to acquire that which is necessary for its plant (whether the same be in the county named in its articles of association, or elsewhere) and for its lines of distribution; and the power also to make, erect and maintain the necessary building, machinery and apparatus for producing heat, light and fuel, or any of them, and to distribute the same; with the right to enter upon any public street, lane, alley or highway,² for such purpose, to alter, inspect and repair its system of distribution, doing as little damage to said streets, lanes, alleys and highways,³ and impairing the free use thereof as little as practicable, and subject to such regulations as the councils of any borough or city, whose highways may be occupied, shall adopt in regard to grades, or for the protection and convenience of public travel over the same: *Provided*, That no company, which may now or hereafter be incorporated under the provisions of this act, shall enter upon any street in any city or borough of this commonwealth, until after the consent, to such entry, of the councils of the city or borough, in which such street may be located, shall have been obtained.⁴ And the said right of eminent domain shall be exercised in the mode prescribed and according to the provisions of the forty-first section of the act,⁵ with this proviso, however, that where any such company shall use its system of distribution for the conveyance of gas for any of the purposes aforesaid at a greater pressure than four ounces per square inch of pressure, or where the gas manufactured shall contain more than ten per cent. of carbonic oxide, such system of distribution shall be provided with suitable appliances for preventing or taking up any leakage, so that danger to life, property and vegetation may be avoided.

¹ Act 29 April, 1874, § 34, as amended by Act 2 June, 1887, § 2; P. L. 311.

² Berks, etc., Road v. Lebanon Steam Co., 5 Pa. C. Ct. 354.

³ Gas pipes cannot be laid under public roads in rural districts without compensation to the owners of the fee, though "as to streets and alleys in cities and boroughs there are reasons why a different rule to some extent should prevail." Sterling's Ap., 111 Pa. 35; Bloomfield, etc., Gaslight Co. v. Calkins, 62 N. Y. 386.

⁴ Phila. Steam Supply Co. v. City of Philada., 41 Leg. Int. 252; City of Reading v. Consumers' Gas Co., Id. 423.

⁵ *Supra*, p. 50-54.

*Clause 2. WATER COMPANIES.*¹—Where such company shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to provide, erect and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city or district where they may be located a sufficient supply of pure water,² or water and water power as aforesaid, and for that purpose may provide, erect and maintain all proper buildings, cisterns, reservoirs, pipes and conduits for the reception and conveyance of water, or water power, and it shall have power to appropriate so much of the water from the rivers, creeks, canal water-rights and easements, within or without the limits of the city, borough or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered and paid as provided for in the forty-first section of the act to which this is a supplement, and it is further authorized and empowered by itself, its agents, engineers and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads and highways and bridges as may be necessary to occupy or to obtain materials for the construction of said works, and to occupy,³ ditch and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes and other highways and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same, and if any injury be done to private property the said company shall make compensation therefor in the manner provided for in the forty-first section of this act :⁴ *Provided*, That this act shall not apply to private spring or private water supplies.

*Clause 3. EXCLUSIVE FRANCHISES.*⁵—The right to have and enjoy the franchise and privileges of such corporation for the manufacture of gas, for light only,⁶ shall be an exclusive one,⁷ within the

¹ Act 29 April, 1874, § 34, as amended by Act 16 May, 1889, § 2; P. L. 227.

² The term "pure water" is not used in its abstract or chemical sense, but means "wholesome, ordinarily pure." *Com. v. Towanda Water-Works*, 22 Weekly Notes Cas. 429.

³ *Farnsworth v. Goodhue*, 48 Vt. 209; *New York, etc., R. R. v. Gas Light Co.*, 5 Hun, 201.

⁴ *Supra*, p. 50-54.

⁵ Act 29 April, 1874, § 34; P. L. 93, as amended by Act of 2 June, 1887, § 3; P. L. 312.

⁶ Under this section as it originally stood in the Act of 1874, it had been held not to embrace electric lighting: *Scranton Electric Co.'s Ap.*, 122 Pa. 164.

⁷ Claims of exclusive privileges are strictly construed: *Emerson v. Com.*, 108 Pa. 111; *Lehigh Water Co.'s Ap.*, 102 Pa. 527.

district or locality covered by its charter; and no other company shall be incorporated for the manufacture of gas to supply light only to the public until the said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock.¹

PENALTY FOR SUPPLYING IMPURE GAS OR WATER.²—*Provided*, That the said corporations shall at all times furnish pure³ gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of.⁴

PRACTICE.⁵—All proceedings authorized by said [the preceding] proviso shall be in accordance with the rules of equity practice now existing: *Provided*, That all lawful fees and costs accruing in such proceedings shall be taxed and allowed as provided by the equity fee bill in the respective court and paid by the unsuccessful party.

APPEAL.⁶—Either party may appeal to the Supreme Court as in cases in equity.

POWER TO MORTGAGE.⁷—It shall be lawful for any gas company or water company, incorporated under the provisions of the act of the general assembly of this commonwealth, entitled "An Act to provide for the incorporation and regulation of certain corporations,"

¹ This is a limitation of power, and even the consent of the previously existing corporation cannot remove the restriction: *O. A. G.*, 2 Chester Co. Rep. 423; *Re Consumers' Mutual Gas Co.*, *O. A. G.*, 15 July, 1878. But it only applies to other private corporations and not to the municipality itself: *Lehigh Water Co.'s Ap.*, 102 Pa. 527; *Freeport Water Co. v. Prager*, 3 Pa. C. Ct. Rep. 371. And as between two applicants, the one first giving legal notice of intention to apply and complying with the statutory requirements, is entitled to letters-patent: *Re Shamokin Coal Gas Co.*, *O. A. G.*, 19 Aug., 1874.

The Corporation Amendment Act of 1883 also provides, "Nothing herein contained shall authorize the amendment, alteration, improvement or extension of the charter of any gas or water company so as to interfere with or cover territory previously occupied by any other gas or water company." Act 13 June, 1883, § 3; *P. L.* 123.

² Act 29 April, 1874, § 34, as amended by Act 2 June, 1887, § 3; *P. L.* 312.

³ See *supra*, p. 92, n. 2.

⁴ By Act of 10 June, 1881, § 1 [*P. L.* 112], this proviso has been extended to all gas and water companies incorporated under any law of this commonwealth.

⁵ Act 10 June, 1881, § 2; *P. L.* 112.

⁶ *Id.*, § 3.

⁷ Act 24 March, 1877; *P. L.* 39.

approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, to borrow any sums of money not exceeding in the aggregate one-half of the capital stock of such company paid in, at a rate of interest not exceeding amounts now allowed by law, and issue bonds therefor with coupons or interest warrants attached, and secure the payment of such bonds and interest warrants by a mortgage to a trustee or trustees of all its real and personal property, rights, privileges and franchises.

*Clause 4. STORAGE AND TRANSPORTATION OF WATER—PURCHASE AND CONDEMNATION OF LANDS.*¹—Before any such water company shall proceed to occupy any land or enclosure, or to obtain and use any material therefrom, for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act.²

*POWERS OF CERTAIN COMPANIES.*³—*Provided*, That companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act, whether such companies shall have been organized under any special act of assembly or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough or city with water, shall have all the rights, privileges and powers conferred by the said eighteenth clause, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act.⁴

*Clause 5. PENALTY FOR ILLEGAL USE OF WATER OR GAS.*⁵—If any person or persons shall open a communication into the water or gas main, or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either shall have been stopped by order of said inspector or authorized agent of said company for repairs or any other cause or purpose, or shall put up any hydrants, pipes or burners in addition to those originally put up and inspected, and introduce into them water and gas, as the case may be, without authority as aforesaid, he, she or they shall be subject to a penalty of not less than ten, nor more than one hundred dollars, recoverable before any alderman or justice of the peace of the proper county, as debts of like

¹ Act of 29 April, 1874, § 34, cl. 4, as amended by Act 12 June, 1879; P. L. 177.

² *Supra*, p. 50-54.

³ Act 29 April, 1874, § 34, cl. 4, as amended by Act 12 June, 1879; P. L. 177.

⁴ *Supra*, p. 50-54.

⁵ Act 29 April, 1874, § 34, P. L. 94.

amount are by law recoverable, one-half to be paid to the informer, and one-half to the company.

Clause 6. INJURING WORKS—PENALTY.¹—If any person shall wilfully or maliciously do, or cause to be done, any act or acts whatever, whereby any building, construction, reservoir or works of said company, or any water or gas pipe, gas post, burner or reflector, or any matter or thing appertaining to the same shall be stopped or obstructed, injured, contaminated or destroyed, the person or persons so offending shall be considered guilty of a misdemeanor, and may therefor be indicted in the Court of Quarter Sessions of the proper county, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court: *Provided*, That such criminal prosecution shall not in any way impair the right of said company to a full compensation in damages by civil suit.

Clause 7. MUNICIPALITY MAY PURCHASE WORKS.²—It shall be lawful at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city or district into which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon, at the rate of ten per centum per annum, deducting from said interest all dividends theretofore declared: *Provided*, That nothing in this section contained shall authorize a company incorporated under the provisions of this act to construct gas or water works within the limits of any municipality, when gas or water works have been constructed by said municipality without the lawful consent of the corporate authorities thereof.³

CHARGES FOR GAS OR WATER—WHEN COURT MAY DETERMINE REASONABLENESS OF.⁴—*And provided further*, That the Court of Common Pleas of the proper county shall have jurisdiction and power upon the bill or petition of any citizen using the gas or water of any of said companies to hear, inquire and determine as to the charges thereof for gas or water so furnished, and to decree that the said bill be dismissed, or that the charges shall be decreased, as to the said court may seem just and equitable, and to enforce obedience to their decrees by the usual process.

¹ Act 29 April, 1874, § 34; P. L. 94.

² *Id.*

³ *Electric Lighting Co. v. Underground Light Co.*, 16 Weekly Notes Cas. 407; 42 Leg. Int. 4.

⁴ Act 29 April, 1874, § 34; P. L. 94.

ELECTRIC LIGHT, HEAT AND POWER COMPANIES—POWERS OF.¹—Companies incorporated under the provisions of this act for the supply of light, heat and power, or any of them, to the public by electricity shall, from the date of the letters-patent creating the same, have the powers and be governed, managed and controlled as follows :

Every such corporation shall have the authority to supply light, heat and power or any of them, by electricity, to the public in the borough, town, city or district where it may be located, and to such persons, partnerships and corporations, residing therein or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and the power also, to make, erect and maintain the necessary buildings, machinery and apparatus for supplying such light, heat and power or any of them, and to distribute the same, with the right to enter upon any public street, lane, alley or highway for such purpose, to alter, inspect and repair its system of distribution : *Provided*, That no company which may be incorporated under the provisions of this act, shall enter upon any street in any city or borough of this commonwealth until after the consent to such entry, of the councils of the city or borough in which such street may be located, shall have been obtained.

EXISTING COMPANIES MAY ACCEPT ACT.²—Any association of persons or corporations heretofore engaged in the business of supplying light, heat and power or any of them, by electricity, under color of a charter or letters-patent of this commonwealth, issued under the provisions of the act to which this act is a supplement, upon accepting the provisions of this act by writing under seal of the company, filed in the office of the secretary of the commonwealth, and filing therewith its letters-patent or charter, which shall be a surrender and acceptance thereof, shall thereupon be a body corporate hereunder and be entitled to and possessed of all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, and all the property, rights, easements and privileges belonging to said associations and corporations, theretofore acquired by gift, grant, conveyance, municipal ordinance or assignment, or otherwise, upon such acceptance as aforesaid, shall be and hereby are ratified, approved, confirmed and assured unto such acceptors and corporations, with like effect and to all intents and purposes, as if the same had been originally acquired by and under the authority of this act, and such company or corporation shall thereafter be governed by the provisions of this act. And the governor shall forthwith issue to the said acceptors letters-patent under this act, under the same name as the company bore which surrendered its charter or letters-patent, and for the same territory, and the corpo-

¹ Act 8 May, 1889, § 2 ; P. L. 136.

² Id., § 3.

ration shall receive credit for any bonus paid by the former corporation : *Provided*, That this act shall not be so construed as to permit any corporation accepting its provisions, to enter into any city or borough without assent of councils, except in so far as the councils thereof have heretofore, or shall hereafter, give their assent thereto.

42. Real Estate Companies.

CAPITAL STOCK—POWERS.¹—The capital stock of corporations for the purchase and sale of real estate, or for holding, leasing and selling real estate, and for maintaining or erecting and maintaining walls or banks for the protection of low lying lands, shall consist in the aggregate at no time of more than six hundred thousand dollars, to be divided into shares of fifty dollars each ; the said corporations shall have the right to purchase, take, hold and enjoy real estate, in fee simple, on lease or upon ground rent, as well that already purchased or acquired as that hereafter purchased or acquired, to improve, lease, mortgage and sell the same in such parts and parcels, and on such terms as to time of payment as they may determine, and to convey the same to the purchaser, in fee simple or for any less estate, or upon ground rents, and in like manner to mortgage, sell, convey or extinguish any ground rent reserved out of any real estate so sold ; and may maintain or erect and maintain walls or banks of stone, earth or other material for the protection of meadow and low lying lands from the encroachments of water : *Provided*, That the quantity of real estate held at any one time, in cities or boroughs, shall not exceed five hundred acres, and outside thereof shall not exceed ten thousand acres, but any number of acres desired, may be protected from encroachment by water.

POWERS OF REAL ESTATE, HOTEL, DROVE YARD AND OTHER COMPANIES.²—Companies incorporated under the provisions of this act, or similar companies already incorporated and accepting the same, for holding, leasing and selling real estate or for the establishment and maintenance of a hotel or boarding-house, or opera and market-house, hotel and drove yard, or both, any or either, shall have the right and power to take, receive, hold and enjoy, either by conveyance, [in] fee simple or for any less estate, or upon ground rent, or for both, all the buildings, lots of lands, premises, [and] appurtenances necessary to the successful maintenance and carrying on of such business ; shall have the power to execute the necessary and proper covenant for securing the payment of ground rent on any of such lands and premises ; shall have power to sell and convey, let or lease, all or any parts of said

¹ Act 29 April, 1874, § 35, as amended by Act 17 April, 1876, § 9 ; P. L. 36.

² Act 29 April, 1874, § 36, as amended by Act 17 April 1876, § 10 ; P. L. 36.

lots, or the tenements and buildings thereon erected, either for cash or on ground rent, or partly for cash and partly on ground rent, and shall have power to hold or erect such buildings, fixtures and appurtenances, and procure such furniture and equipments as may be necessary for the success of its business; and the said corporation may borrow money, in the manner provided in section thirteen of this act,¹ to an amount equal to the capital stock of the company paid up, and secure the same by mortgage upon the said lots, buildings and fixtures and appurtenances.

43. Safe Deposit Companies.

²Safe deposit companies shall have power to receive upon deposit for safe keeping, jewelry, plate, stocks, bonds, notes and valuable property of every kind, upon terms to be prescribed by the by-laws of such corporation, which by-laws shall at all times be posted up in the place or places of business of such corporations.

44. Building and Loan Associations.³

⁴Building and loan associations incorporated under the provisions of this act, shall have the powers, and from the date of the letters-patent creating the same, when not otherwise provided in this act, be governed, managed and controlled as follows :

POWERS.⁵—They shall have the power and franchise of loaning or advancing to the stockholders thereof the moneys accumulated from

¹ *Supra*, p. 36.

² Act 29 April, 1874, § 35, as amended by Act 17 April, 1876, § 9; P. L. 36.

³ The Act of 10 April, 1879 [P. L. 16], is a general statute regulating building associations, and has been here woven in with the Act of 1874, the arrangements of the present section being based upon the doctrine that the provisions of the later statute upon the same subject-matter as the former acts operated as a repeal of those former provisions, saving all rights previously acquired, and more particularly as the tenth section of the Act of 1879 repeals all acts inconsistent therewith; a doctrine seemingly sanctioned by *Booz's Ap.*, 109 Pa. 598; *Rhoads v. Ass'n*, 82 Pa. 187; *Nusser v. Com.*, 25 Pa. 126; *Johnston's Estate*, 33 Pa. 511. Lest, however, in the absence of judicial interpretation, this arrangement should prove misleading, and as many associations chartered prior to the Act of 1879 have not accepted its provisions, the omitted portions of the Act of 1874 are inserted in notes to their appropriate places.

⁴ Act 29 April, 1874, § 37, cl. 1; P. L. 96.

⁵ *Id.* The insertion of unauthorized provisions in the charter will not affect the valid provisions: *Albright v. Ass'n*, 102 Pa. 411; *Becket v. Ass'n*, 88 Pa. 211.

time to time,¹ and the power and right to secure the re-payment of such moneys, and the performance of the other conditions upon which the loans are to be made,² by bond and mortgage or other security, as well as the power and right to purchase or erect houses, and to sell, convey, lease or mortgage the same at pleasure to their stockholders or others for the benefit of their stockholders, in such manner, also, that the premiums taken by the said associations, for the preference or priority of such loans shall not be deemed usurious, and so, also, that in case of non-payment of instalments, premiums or interest by borrowing stockholders, for six months,³ payment of principal, premiums and interest, without deducting the premium paid, or interest thereon, may be enforced by proceeding on their securities according to law.

PREMIUMS MAY BE PAID IN INSTALMENTS.⁴—It shall be lawful for any mutual savings fund, or building and loan association, now incorporated or hereafter to be incorporated, in addition to dues and interest, to charge and receive the premium or bonus bid by a stockholder for preference or priority of right to a loan in periodical instalments; and such premium or bonus so paid in instalments shall not be deemed usurious, but shall be taken to be a payment as it falls due in contradistinction to a premium charged and paid in advance; and in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage or custom to the contrary notwithstanding.

INTEREST IN ADVANCE.⁵—It shall also be lawful for any mutual savings fund or building and loan association to charge and deduct interest in advance, in lieu of premiums for preference or priority of right to a loan.

CONTENTS OF CERTIFICATE.—*Provided*, That the certificate of incorporation of each association hereafter to be incorporated, and the certificate provided in section nine of this act for those heretofore incorporated,⁶ shall set forth whether the premium or bonus bid for

¹ The association is not bound to inquire for what purpose the money is to be applied by the borrowers: *Juniata Ass'n v. Mixell*, 84 Pa. 316; *Relief Fund v. Tug-shore*, 8 Luz. Leg. Reg. 199; *Hagerman v. Ass'n*, 25 Ohio St. 186.

² When a mortgage is conditioned for the payment of the loan and of monthly dues, repayment of principal and interest will not necessarily extinguish the obligation if the association desires to retain it as security for the dues: *Everham v. Ass'n*, 47 Pa. 352.

³ *Ass'n v. Hopple*, 12 Weekly Notes Cas. 222.

⁴ Act 10 April, 1879, § 1; P. L. 16.

⁵ *Id.*

⁶ *Infra*.

the prior right to a loan shall be deducted therefrom in advance or paid in periodical instalments, or whether interest in advance shall be deducted from the loan in lieu of premium or bonus.

CAPITAL STOCK.¹—The capital stock of any corporation created for such purposes by virtue of this act, shall at no time consist in the aggregate of more than one million dollars, to be divided into shares of such denomination, not exceeding five hundred dollars each, and in such number as the incorporators may, in the application for their charter specify: *Provided*, That the capital stock may be issued in series, but no such series shall at any issue exceed in the aggregate five hundred thousand dollars, the instalments on which stock are to be paid at such time and places as the by-laws shall appoint; no periodical payment of such instalments to be made exceeding two dollars on each share, and said stock may be paid off and retired as the by-laws shall direct.²

UNPAID INSTALMENTS TO BE A LIEN.³—Every share of stock shall be subject to a lien for the payment of unpaid instalments and other charges incurred thereon under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of the shares withdrawn or forfeited; the stock may be issued in one or in successive series, in such amount as the board of directors or the stockholder may determine.⁴

¹ Act 29 April, 1874, § 37, cl. 2; P. L. 97.

² *Rodgers v. Ass'n*, 7 Weekly Notes Cas. 95. A stockholder cannot, *qua* stockholder, maintain an action at law against the association: *O'Rourke v. Ass'n*, 93 Pa. 308.

³ Act 29 April, 1874, § 37, cl. 2; P. L. 97.

⁴ The remainder of this section, which is apparently supplied by the Act of 10 April, 1879, § 2 and § 3 [*infra*, p. 101], is as follows:

"**WITHDRAWAL OF STOCKHOLDERS.**—Any stockholder wishing to withdraw from the said corporation, shall have power to do so by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, less all fines and other charges; but after the expiration of one year from the issuing of the series, such stockholders shall be entitled, in addition thereto, to legal interest thereon: *Provided*, That at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security.

"**RIGHTS OF PERSONAL REPRESENTATIVES.**—Upon the death of a stockholder, his or her legal representatives shall be entitled to receive the full amount paid in by him or her and legal interest thereon, first deducting all charges that may be due on the stock; no fines shall be charged to a deceased member's account from and after his or her decease, unless his [the] legal representatives of such decedent assume the future payments on the stock." Act 29 April, 1874, § 37, cl. 2; P. L. 97. See *Laurel Run Ass'n v. Sperring*, 106 Pa. 338.

VOLUNTARY WITHDRAWALS REGULATED.¹—Stockholders withdrawing voluntarily, shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws,² any law or usage to the contrary notwithstanding; but payment of the value of stock so withdrawn, shall only be due when the funds now by law applicable to the demand of withdrawing stockholders³ are sufficient to meet and liquidate the same, and then only in the order of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting, and have been then and there endorsed as to times of presentation by the officer designated by the by-laws of the association.⁴

INVOLUNTARY WITHDRAWALS.⁵—The by-laws may provide for the involuntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: *Provided*, That such withdrawal and cancellation shall be *pro rata* among the shares of the same series of stock: And *provided further*, That not less than legal interest shall be credited and allowed to each share so withdrawn and cancelled.

BY-LAWS.⁶—The numbers, titles, functions and compensation of the officers of any such corporation, their terms of office, the times of their elections, as well as the qualifications of electors, and the ratio and manner of voting, and the periodical meetings of the said

¹ Act 10 April, 1879, § 2; P. L. 16.

² *Booz's Ap.*, 109 Pa. 592; in *Knoblauch v. Ass'n*, 8 Pitts. Leg. Jour. (N. S.) 39, a by-law was sustained which provided for a certain deduction from payment to withdrawing members to meet anticipated losses: *McGrath v. Ass'n*, 44 Pa. 383. Unless otherwise provided in the by-laws withdrawing stockholders who are borrowers are entitled to such interest as well as non-borrowers: *Winterer v. Fairmount Ass'n*, 44 Leg. Int. 122.

³ That is, one-half of the funds in the treasury: Act 12 April, 1859; P. L. 544; Act 29 April, 1874, § 37, cl. 2 [P. L. 97], quoted *supra*. p. 100, n. 4. "It is an abuse of corporate power to invest all the funds and leave no fund to pay withdrawing members. The provision as to payment of withdrawals out of one-half only of the funds in the treasury, is a charter limitation on the rights of withdrawing members, intended to prevent a conflict with the exercise of other corporate franchises." *Second Nat. Ass'n v. Hubley*, 34 Leg. Int. 6.

⁴ This section is apparently intended to meet the decision in *U. S. Ass'n v. Silverman*, 85 Pa. 394; *Wittman v. Ass'n*, 7 Weekly Notes Cas. 80.

The secretary's sealed certificate that notice of withdrawal has been duly given, and that the stock will be paid in regular order of notice, is not an instrument within the affidavit of defence act: *Newlin v. Ass'n*, 9 Weekly Notes Cas. 220; nor is an unaccepted order drawn upon the treasurer: *Mehring v. Commonwealth Ass'n*, 16 Weekly Notes Cas. 99; see *Male v. Ass'n*, *Id.* 380; and an order drawn by the president upon the treasurer is not a negotiable instrument: *Ashland Co. v. Ass'n*, 9 Luz. Leg. Reg. 41.

⁵ Act 10 April, 1879, § 3; P. L. 17.

⁶ Act 29 April, 1874, § 37, cl. 3; P. L. 97.

corporation, shall be determined by the by-laws when not provided by this act.

DISPOSAL OF FUNDS.¹—The said officers shall hold stated meetings, at which the money in the treasury, if over the amount fixed by charter as the full value of a share, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share for each share of stock held by such stockholder.² *Provided*, That a stockholder may borrow such fractional part of the amount fixed by charter as the full value of a share, as the by-laws may provide; good and ample security, as prescribed by the by-laws of the corporation, shall be given by the borrower to secure the re-payment of the loan; in case the borrower shall neglect to offer security, or shall offer security that is not approved by the board of directors, by such time as the by-laws may prescribe, he or she shall be charged with legal interest,³ together with any expenses incurred, and the loss in premium, if any, on a re-sale, and the money may be re-sold at the next stated meeting.⁴

RE-PAYMENT OF LOANS.⁵—A borrower may re-pay a loan at any time, and in case of the re-payment thereof before the maturity of the shares pledged for said loan, there shall be refunded to such borrower, (if the premiums, bonus or interest shall have been deducted in advance,) such proportions of the premiums, bonus or advance interest bid, as the by-laws may determine: *Provided*, That in no case shall the association retain more than one-hundredth of said premi-

¹ Act 29 April, 1874, § 37, cl. 4; P. L. 97.

² The association cannot fix a minimum rate of premium, nor can they borrow money wherewith to make loans: *Stiles' Appeal*, 95 Pa. 122; *Orangeville Ass'n v. Young*, 9 Weekly Notes Cas. 251. And, obviously, loans to stockholders are not "discounts" within Art. XVI, Sect. 11, of the constitution: *Building Ass'n v. Seemiller*, 3 Phila. Rep. 115; *Schober v. Ass'n*, 35 Pa. 223.

³ Interest cannot be charged upon money bid for by a borrower whose application is subsequently refused: *Winterer v. Fairmount Ass'n*, 44 Leg. Int. 122.

⁴ The remainder of this section, which is supplied by Act 10 April, 1879, § 5, [*infra*, p. 103.] is as follows:

"In case of non-payment of instalments or interest by borrowing stockholders, for the space of six months, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced by proceeding on their securities according to law." Act 29 April, 1874, § 37, cl. 4; P. L. 98.

⁵ Act 10 April, 1879, § 4; P. L. 17. The provision in the Act of 1874, is as follows:

"A borrower may repay a loan at any time and in case of the re-payment thereof, before the expiration of the eighth year, after the organization of the corporation, there shall be refunded to such borrower one-eighth of the premium paid for every year of the said eight years then unexpired: *Provided*, When the stock is issued in separate series the time shall be computed from the date of the issuing the series of stock on which the loan was made." Act 29 April, 1874, § 37, cl. 5; P. L. 98.

ums or bonus for each calendar month that has expired since the date of the meeting upon which the loan was made,¹ or if interest in advance, it shall retain only the interest due on the loan up to the time of settlement: *And further provided*, That such borrower shall receive the withdrawing value of the shares pledged for said loan, and the shares shall revert back to the association.²

REMEDY FOR NON-PAYMENT OF INSTALMENTS, PREMIUMS, ETC.³—In case of non-payment of instalments of stock, premiums, dues or interest, by borrowing stockholders, for the space of six months,⁴ payment of the same, together with the full principal of the loan, may be enforced by proceeding on their securities according to law; and the moneys so recovered shall be paid into the treasury of the association for such uses (loans or otherwise) as may be deemed proper by the association; and if the said moneys so recovered, together with the withdrawal value of the shares of such defaulting borrower, shall exceed the amount it would have required, according to the preceding section, to have voluntarily repaid the loan, together

¹ This apparently supersedes the decision in *Sherman Ass'n v. Rock*, 9 Phila. Rep. 75.

² The method of computation under prior acts was elaborated in *Marietta, etc., Ass'n v. Hanlen*, 10 Lancaster Bar, 47.

Under the former statutes it was held that a borrower might apply his stock to the payment of his loan, but that payments of dues were not payments on account of the mortgage unless so appropriated by the mortgagor: *N. A. Ass'n v. Sutton*, 35 Pa. 463; *Kelly v. Ass'n*, 39 Pa. 148; *Kreamer v. Ass'n*, 6 Weekly Notes Cas. 267; *Link v. Ass'n*, 89 Pa. 15; *Early's Appeal*, Id. 411; see *Hazel Loan Ass'n v. Groesbeck*, 41 Leg. Int. 16; and for this purpose the value of the stock is but the amount of the payments thereon: *Watkins v. Ass'n*, 97 Pa. 514; and that this right of appropriation being a personal privilege, could not be exercised by a terre-tenant, a sheriff's vendee, or any other than the mortgagor: *Economy Ass'n v. Hungerbuehler*, 93 Pa. 258; *Kreamer v. Ass'n*, 36 Leg. Int. 28; 6 Weekly Notes Cas. 267; *Spring Garden Ass'n v. Ass'n*, 46 Pa. 493; *Building Ass'n v. Eshelbach*, 7 Phila. Rep. 189. This doctrine equally applies to unincorporated associations: *Link v. Ass'n*, 89 Pa. 15.

So a member who with the consent of the association has assigned his stock to a third person, cannot claim a credit for the value of such shares when sued upon his mortgage: *Schober v. Ass'n*, 35 Pa. 223; and the law has been held the same way where the stock was repledged to the association to secure an additional loan: *Phila., etc., Ass'n v. Moore*, 47 Pa. 233. And when assigned to the corporation it is not subject to sale under an execution against the assignor alone: *Early's Appeal*, 89 Pa. 411.

When stock is assigned to the association as collateral it has been held in New Jersey that equity will, as between the association and a second mortgagee of the land, primarily compel the appropriation of the stock to the payment of the first mortgage, and that this equity is not defeated by a levy on the stock by judgment creditors of the mortgagor: *Herbert v. Ass'n*, 17 N. J. Eq. 497; *Phillipsburg, etc., Ass'n v. Hawk*, 27 Id. 355. But in *Central Ass'n v. Schmitt*, 12 Weekly Notes Cas. 239, a higher effect was given to rights acquired by creditors claiming under attachments execution issued before election made, and in *Harris' Ap.* [S. C. of Pa., April 5, 1886] such right of appropriation was held to be altogether defeated by a prior transfer of the stock to a third person.

³ Act 10 April, 1879, § 5; P. L. 17.

⁴ *Ass'n v. Hopple*, 12 Weekly Notes Cas. 222.

with all the expenses incurred by the association, such excess shall be repaid to such defaulting borrower.¹

FINES LIMITED.²—Fines or penalties for the non-payment of instalments of dues, interest and bonus or premium, shall not exceed two per centum per month on all arrearages.³

PREMIUMS, ETC., NOT USURIOUS.⁴—No premiums, fines or interest on such premiums, that may accrue to the said corporation, according to the provisions of this act, shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this commonwealth.⁵

MARRIED WOMEN STOCKHOLDERS.⁶—It shall be lawful for any married woman of full age to hold stock in any of said saving funds, building or loan associations; and as such stockholder, she shall have all the rights and privileges of other members, including the right to borrow money from the said associations and bid premiums therefor, and also shall have the right and power to secure such loan by transferring her said stock or other securities to said association from which the same was borrowed, or by executing bond and mortgage upon her separate real estate to secure said loan: *Provided however*, That the husband of such married woman join in the execution of such bond and mortgage; and such married woman shall also have the right to sell, assign and transfer her said stock or withdraw the same, without joining the husband in such transfer or withdrawal; and it shall be lawful for any such savings fund, building or loan association to collect such loan made to such married woman, including the dues, in-

¹ This section was doubtless intended to obviate the inconvenient practice in cases of recovery by legal process, required by Act 12 April, 1859, § 5 [P. L. 546], which provision was omitted from the Act of 1874. This section of the Act of 1859 was construed in *Flounders v. Hawley*, 78 Pa. 47.

When the borrower's mortgage is divested by an Orphans' Court sale for the payment of debts, the association can only claim as in the case of a voluntary re-payment: *Snider's Estate*, 13 Phila. Rep. 560.

² Act 10 April, 1879, § 6; P. L. 17.

³ *Lynn v. Freemansburg Ass'n*, 117 Pa. 1; *Howley Ass'n v. Taylor*, 39 Leg. Int. 412.

⁴ Act 29 April, 1874, § 37, cl. 6; P. L. 98.

⁵ *Juniata Ass'n v. Mixell*, 84 Pa. 313; *Sunbury Ass'n v. Martin*, 1 Luz. Leg. Reg. 147. Unincorporated associations can only recover legal interest: *Jarrett v. Cope*, 68 Pa. 67; *Rhoads v. Ass'n*, 82 Pa. 180; *Link v. Ass'n*, 89 Pa. 15; but if duly incorporated, unauthorized provisions in the charter will not deprive the corporation of the benefit of this section: *Becket v. Ass'n*, 88 Pa. 211; *Albright v. Lafayette Ass'n*, 102 Pa. 412. And in an action on the mortgage it is not a sufficient defence to merely state that the borrower only received a certain sum and has made certain payments, for the presumption in the former case is that the difference represents the premium, and in the latter case that the payments were for fines and dues—all legalized by the act: *Selden v. Ass'n*, 81* Pa. 336.

⁶ Act 10 April, 1879, § 7; P. L. 17.

terest, premiums and fines, as loans made by such associations to other members are now by law collected, and such stock or interest in such stock, shall not be liable for the debts of any husband of such married woman.¹

ELECTION OF OFFICERS.²—No corporation or association created under this act shall cease or expire³ from neglect on the part of the corporators to elect officers at the time mentioned in their charter or by-laws, and all officers elected by such corporation shall hold their offices until their successors are duly elected.³

MAY PURCHASE AND CONVEY LANDS.⁴—Any loan or building association incorporated by or under this act, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, judgment, lien or other incumbrance, or ground rent, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold or be entitled to at the passage of this act, to sell, convey, lease or mortgage at pleasure, to any person or persons whatsoever; and all sales of real estate heretofore made by such associations to any person or persons not members of the association so selling, are hereby confirmed and made valid.

⁵ All such corporations shall have full power to purchase lands and

¹ *Dilzer v. Beethoven Ass'n*, 103 Pa. 86. This section was passed to meet *Wolbach v. Ass'n*, 84 Pa. 211. Even under the prior acts the husband was liable upon his obligation to secure his wife's indebtedness: *Wiggin's Ap.*, 100 Pa. 155, and *a fortiori*, when he received the benefit of the loan: *Tanner's Appeal*, 95 Pa. 119; and the wife's estate is also equally liable upon the joint mortgage thereof to secure the husband's debts: *Juniata Ass'n v. Mixell*, 84 Pa. 314.

² Act 29 April, 1874, § 37; P. L. 98.

³ The association is bound to continue its existence until its objects have been accomplished, and an injunction has been granted to restrain a premature dissolution: *Pfaff v. Ass'n*, 6 Weekly Notes Cas. 349; see *White Haven Ass'n v. Kelley*, 9 Luz. Leg. Reg. 9. Upon the insolvency of a building association priority of payment should be made to those general creditors whose claims do not depend on former membership, and the residue be distributed *pro rata* among stockholders whether holding unpaid withdrawal orders or not; and these equities may be worked out by appointing a receiver or through an assignment and auditor: *Christian's Ap.*, 102 Pa. 185; *Hanney v. Enterprise Ass'n*, 16 Weekly Notes Cas. 450; *In re National, etc., Ass'n*, 9 Weekly Notes Cas. 79; *Goodrich v. Ass'n*, 54 Georgia, 99.

The insolvency of a building association puts an end to its operations as such association, and thereafter an officer with knowledge of the insolvency cannot discharge his indebtedness to it with stock held by him: *Quein v. Smith*, 108 Pa. 325; so, upon insolvency, a borrowing stockholder will be charged with the sum actually received on his mortgage with interest, and credited with all actual payments of interest, but stock payments will not be credited thereon: *Strohen v. Franklin Ass'n*, 115 Pa. 273; and satisfaction of a mortgage made upon an erroneous supposition that the stock had matured when in reality the association was insolvent can be stricken off: *Callahan's Ap.*, 23 Weekly Notes Cas. 233.

⁴ Act 29 April, 1874, § 37, cl. 8; P. L. 98.

⁵ *Id.*, cl. 9.

to sell and convey the same, or any part thereof, to their stockholders or others in fee simple, with or without the reservation of ground rents, but the quantity of land purchased by any one of said associations hereafter incorporated, shall not, in the whole, exceed fifty acres, and in all cases the lands shall be disposed of within ten years from the date of the incorporation of such associations respectively.¹

MAY ASSIGN GROUND RENTS.²—All land and building associations are hereby authorized to make sale of and assign or extinguish to any person or persons the ground rents created as aforesaid.

PRIOR PURCHASE AND SALE CONFIRMED.³—All purchases of lands heretofore made by building and loan associations, incorporated by virtue of any law of this commonwealth, and also all sales of the same made by them to their stockholders or others, are hereby confirmed, and the titles of said associations and their vendees are hereby declared good and valid, to all intents and purposes; and the said associations, their successors or assigns, may sell, convey or lease, at pleasure, at any time within five years from the passage of this act, the undisposed-of portions of the real estate so hereto purchased.

EXEMPTION FROM BONUS AND REGISTRATION.⁴—The bonus or taxes due to the commonwealth upon the capital stock of corporations, as provided for by Act of first of May, one thousand eight hundred and sixty-eight,⁵ or by any other act, shall not apply to or be due from mutual savings fund, or building and loan associations; nor shall the registry for corporations, prescribed by the first section of the act of first of May, one thousand eight hundred and sixty-eight,⁶ the first section of the act of twenty-fourth of April, one thousand eight hundred and seventy-four,⁷ and the twenty-sixth section of the act of twenty-ninth of April, one thousand eight hundred and seventy-four,⁸ apply to or be required of mutual savings fund, or building and loan associations.

EXEMPTION FROM TAXATION.⁹—Mutual loan and building associations shall be exempt from the provisions of each and every law

¹ But they cannot thus invest all their funds to the prejudice of withdrawing stockholders: *Second Nat. Ass'n v. Hubley*, 34 Leg. Int. 6; *supra*, p. 101.

² Act 29 April, 1874, § 37, cl. 10; P. L. 99.

³ Act 17 June, 1878; P. L. 214; *Faulkner's Ap.*, 11 Weekly Notes Cas. 48.

⁴ Act 10 April, 1879, § 8; P. L. 17.

⁵ P. L. 108.

⁶ *Id.*

⁷ P. L. 68.

⁸ *Supra*, p. 48.

⁹ Act 22 May, 1883; P. L. 38.

imposing taxes for state purposes on their capital stock or mortgages, and other securities for moneys loaned to their own members, but the real estate owned by said association shall be subject to the same rates of taxation as the real estate of other corporations and persons: *Provided however*, That the right of the commonwealth to collect taxes already accrued is hereby reserved.

ACCEPTANCE BY EXISTING ASSOCIATIONS.¹—Mutual savings fund, or building and loan associations, heretofore incorporated under the provisions of any law, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act, upon filing with the secretary of the commonwealth a certificate of their acceptance of the same in writing, under the duly authenticated seal of said association, which certificate shall also prescribe their mode or plan of charging premiums, bonus or advance interest, as set forth in the first section of this act; and upon such acceptance and approval thereof by the governor, he shall issue letters-patent to said corporation reciting the same.

REPEAL.²—All laws or parts of laws inconsistent with the provisions of the act are hereby repealed.

45. Iron, Steel, Metal and Wood Companies.

⁴ Companies incorporated under the provisions of this act for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood or metal, or both, unless otherwise provided by this act, shall, from the date of letters-patent creating the same, have the powers and be governed, managed and controlled as follows:

¹ Act 10 April, 1879, § 9; P. L. 17.

² Id., § 10.

³ **SUITS AFTER EXPIRATION OF CHARTER.**—All building, saving and loan associations may bring and maintain suits, and carry on those already brought in their corporate names on all judgments, bonds, mortgages, notes or other evidences of debt or obligations due them, or for monthly dues, interest or any demand owing to them, and proceed to judgment and execution, notwithstanding their charter may have expired, and the officers last elected, or the survivors of them, shall be the officers to represent said corporations for such purpose, and if no officer survive the stockholders may elect others under their by-laws.

This act shall only be construed so as to enable said associations to collect up and divide their assets and wind up their affairs, and not to allow them to transact new business: *Provided*, This act shall only apply to the city of Philadelphia: Act 26 April, 1869; P. L. 1223; *Cooper v. Oriental Ass'n*, 100 Pa. 402; *Harmony Ass'n v. Berge*, 41 Leg. Int. 280.

⁴ Act 29 April, 1874, § 38; P. L. 99. For powers of foreign companies see Act of 9 June, 1881, amended by Act 25 June, 1885; P. L. 179; as amended by Act 28 April, 1887; P. L. 76.

*Clause 1. GENERAL POWERS.*¹—Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore and other minerals, and to erect and construct furnaces, forges, mill, foundries, manufactories and such other improvements and erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require: *Provided*, They shall not at any one time have more than ten thousand acres of land within this commonwealth, including leased lands, except companies organized to manufacture iron with charcoal, which said companies may hold timber lands not exceeding the quantity that will be required to furnish wood for charcoal for the purposes of said companies, and said lands may be located in not exceeding four contiguous counties.

*Clause 2. MAY ISSUE BONDS.*²—Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum per annum, and sell, exchange or otherwise dispose of the same, upon such terms and conditions as they may deem advisable, and such bonds, and the interest thereon, may be secured by a mortgage or mortgages upon the corporate franchises, real and leasehold estate: ³ *Provided*, They shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.

*Clause 3. ANNUAL STATEMENT AND REPORTS.*⁴—The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year; and it shall also be their duty to make report to the auditor general, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the commonwealth, and such report shall be veri-

¹ Act 29 April, 1874, § 38, cl. 1; P. L. 99, as amended by Act 24 May, 1887; P. L. 188.

² Act 29 April, 1874, § 38, cl. 2; P. L. 99.

³ By Act 23 March, 1877, P. L. 32, as amended by Act 24 June, 1885; P. L. 151 [quoted *supra*, p. 36] the Courts of Common Pleas are invested with equity jurisdiction to enforce rights under such mortgages.

⁴ Act 29 April, 1874, § 38, cl. 3; P. L. 99.

fied by the oaths or affirmations of the president and treasurer of such corporation; and any such corporation which shall neglect or refuse to report to the auditor general, according to law, shall be liable to a penalty of five hundred dollars for the use of the commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.

*Clause 4. POWER TO APPROPRIATE STREAMS.*¹—It shall and may be lawful for any corporation organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, flowing through or along, or rising upon any lands belonging to and owned by such corporation in the vicinity of their works, for the purpose of supplying the same with stream or water power,² upon the said corporation filing in the office of the prothonotary of the Court of Common Pleas of the county in which such works may be located, a draft or drafts showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs thus appropriated, so as to diminish the usual accustomed and natural flow thereof: *Provided*, That every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of such stream or streams, spring or springs, have [*has*] heretofore been accustomed to flow off or along the lands of such corporation.

*Clause 5. CONSTRUCTION OF GRANT.*³—The incorporation of any association of persons for the purposes named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same.

*Clause 6. OTHER CORPORATIONS MAY HOLD STOCK AND BONDS OR GUARANTEE PAYMENT.*⁴—It shall and may be lawful for any incorporated company of this commonwealth, or elsewhere, to subscribe for and take shares of stock in any company incorporated for the purposes named in said section thirty-eight of the said “corpo-

¹ Act 29 April, 1874, § 38, cl. 4; P. L. 99.

² In the pamphlet laws the fourth, fifth and six lines are misplaced. The above is evidently the correct reading.

³ Act 29 April, 1874, § 38, cl. 5; P. L. 99. See *supra*, p. 44, sect. 21.

⁴ *Id.*, cl. 6, as amended by Act 17 June, 1887; P. L. 412.

ration act of one thousand eight hundred and seventy-four," or to purchase the bonds or stock of such company or guarantee the payment of said bonds and the interest thereon, or either principal or interest; and it shall and may be lawful for any manufacturing company of this commonwealth incorporated for the purposes named in said section thirty-eight of the said corporation act of one thousand eight hundred and seventy-four to subscribe for, purchase, hold and dispose of bonds or stocks in any incorporated company of this commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: *Provided*, That this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier of this commonwealth, or elsewhere, to subscribe and take shares of stock in any company incorporated for the purposes named in this section of this act, or to purchase the bonds or stock, or to guarantee the payment of said bonds and the interest thereon, or either principal or interest.

*Clause 7. CITIZENSHIP OF CORPORATORS AND OFFICERS—PLACE OF BUSINESS.*¹—A majority of the stock of any such corporation may be held by persons who are not citizens of this state or of the United States. A majority of its directors may be citizens of another state, or of any foreign country; and it may have an office at any place without the state, at which the by-laws of the corporation may authorize the same [where] meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this state is transacted, and an officer of the company there upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this commonwealth.

*EXISTING CORPORATIONS.*¹—Corporations for any of the purposes named in this section, heretofore created by any special or general law of this commonwealth, on accepting the provisions of the constitution, shall be entitled to all the privileges and powers conferred by this act upon such corporations to be hereafter created.

*Clause 8. LIABILITY OF STOCKHOLDERS.*²—The stockholders of every company incorporated for the purposes named in this section shall only be individually liable for debts due to the laborers, mechanics, or clerks, for services, and in that case for no period exceeding six months.³

¹ Act 29 April, 1874, § 88, cl. 7; P. L. 99.

² Act 29 April, 1874, § 38, cl. 8; P. L. 99.

³ See *supra*, p. 37-39, and *infra*, p. 115, n. 5, for the decisions under this section.

*Clause 9. REPEAL.*¹—All laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions hereof, or the stockholders of any such company: *Provided*, This shall not apply to laws imposing taxes upon such corporations.

46. Mechanical, Mining, Quarrying, Manufacturing and Other Corporations.

² Companies incorporated under the provisions of this act for the carrying on of any mechanical, mining, quarrying, manufacturing or other business, as provided in clause eighteen of the second class, in section two hereof,³ when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, have the powers and be governed, managed and controlled as follows:

CAPITAL STOCK.⁴—That every such corporation may have a capital stock not exceeding five million dollars, and may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely: general stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half-yearly sum or dividend to be expressed in the certificates, not exceeding four per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.

PAYMENT OF STOCK ASSESSMENT.⁵—That if the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon. The treasurer shall give notice of the time and place appointed for such sale, and of the sum [*due*] on each share, by

¹ Act 29 April, 1874, § 38, cl. 9; P. L. 99.

The Act of 29 June, 1881; P. L. 147, regulating the payment of wages to employees was declared unconstitutional in *Godcharles v. Wigeman*, 18 Weekly Notes Cas 214.

The arbitration of disputes between employer and employed is regulated by Act 26 April, 1883; P. L. 15, known as "The voluntary trade tribunal Act of 1883."

² Act 29 April, 1874, § 39; P. L. 101.

³ *Supra*, p. 12.

⁴ Act 29 April, 1874, § 39, cl. 1; P. L. 101.

⁵ *Id.*, cl. 2; *supra*, p. 32-35.

advertising the same three weeks successively before the sale, in some newspaper published in said county; and a deed of the share so sold made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, [who] shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.¹

CERTIFICATE OF PAYMENT OF CAPITAL STOCK TO BE RECORDED.²

—The president and directors, with the treasurer and clerk of such companies, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer, clerk and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.

WITHDRAWAL OF CAPITAL.³—If any part of the capital stock of a company is withdrawn and refunded to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.⁴

DIVIDENDS—LIABILITY OF DIRECTORS.⁵—If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: *Provided*, That the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.⁶

¹ The remedy herein provided is exclusive of all others: *Richboro Ass'n v. Ryan*, 16 Weekly Notes Cas. 383; 42 Leg. Int. 268; *Belmont Park Ass'n v. Zoller*, 22 Weekly Notes Cas. 545. But the Act of 25 May, 1887 (P. L. 273), amended the twelfth section of the Act of 29 April, 1874, and abolished the power of the corporation to assess any sum in addition to the par value of the stock: see *supra*, p. 35, n. 4.

² Act 29 April, 1874, § 39, cl. 3; P. L. 101.

³ Act 29 April, 1874, § 30, cl. 4; P. L. 101.

⁴ *Supra*, p. 37-39; *infra*, p. 113.

⁵ Act 29 April, 1874, § 39, cl. 5; P. L. 101.

⁶ The company need not be joined as co-defendant in an action against the directors, for the latter being wrongdoers, have no recourse over: *Hill v. Frazier*, 22 Pa. 320. [This case was decided upon section 14 of the general manufacturing Act of 7 April, 1849 (P. L. 567), of which the present section is a transcript, save that the former act provides that the directors shall be liable "in their individual capaci-

INDEBTEDNESS—LIABILITY OF DIRECTORS.¹—The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock actually paid in, unless such debt be for unpaid purchase-money for lands bought, which debt shall only be a lien upon and collectible from said land; and in case of any excess, the directors, under whose administration it occurs, shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: ² *Provided*, That any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose.

PENALTY FOR FALSE CERTIFICATE.³—If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.*

ties," which is probably immaterial.] To the same effect are *Sheriff v. Oil Co.*, 7 Phila. Rep. 4; 1 *Brewster*, 489; *Archer v. Rose*, 3 *Brewster*, 265; *Young v. Oil Co.*, 10 Phila. Rep. 525, decided upon the Act 18 July, 1863; P. L. [1864] p. 1105.

And a director who with knowledge of the insolvency of the company loans money to the corporation for the purpose of declaring a dividend, is not entitled, upon an assignment of the corporate effects, to re-payment of any part of the loan so made, until the claims of stockholders are satisfied: *Kisterbock's Appeal*, 51 Pa. 483.

¹ Act 29 April, 1874, § 39, cl. 6; P. L. 101.

² *Supra*, p. 112, n. 6. In other states this liability has been held to be a general one enuring to the benefit of all creditors: upon bill filed and not for the benefit of individual creditors: *Low v. Buchanan*, 94 Ill. 76; *Hornor v. Henning*, 93 U. S. 228. And in *First Nat. Bank v. Price*, 33 Md. 487, the courts of that state declined to enforce this liability against a director of a Pennsylvania corporation residing in Maryland, upon the ground that the penalty could only be enforced in the state wherein the law which imposed it was enacted: *Thompson's Liability of Stockholders*, § 80-86.

³ Act 29 April, 1874, § 39, cl. 6; P. L. 102.

* *Supra*, p. 37-39. *Patterson v. Lane*, 35 Pa. 275; *Lane's Ap.*, 105 Pa. 58. Such statutes are penal and strictly construed: *Steam Engine Co. v. Hubbard*, 101 U. S. 188. Under somewhat analogous acts in Connecticut, it was recently decided that an action for this penalty will not survive the death of the officer thus liable: *Mitchell v. Hotchkiss*, 12 Reporter, 684. So in New York it has been held that the officers are only liable for the debts, and not for the *torts* of the corporation, and that the action must be founded upon the original claim, a judgment against the corporation not being evidence: *Esmond v. Bullard*, 16 Hun, 65; *Miller v. White*, 50 N. Y. 137: and that an officer of the corporation may relieve himself from future liabilities by resigning, although the resignation is not acted upon by the board: *Blake v. Wheeler*, 18 Hun, 496.

POWER TO HOLD AND CONVEY REAL AND PERSONAL ESTATE.⁴—Such corporation may, in its corporate name, take, hold and convey such real and personal estate as is necessary for the purpose of its organization,² may carry on its business, or so much thereof as is convenient, beyond the limits of the commonwealth, and may there hold any real or personal estate necessary for conducting the same.³

ANNUAL CERTIFICATE TO BE FILED.⁴—Every such corporation shall, annually, in September, make, and the president, treasurer and a majority of the directors, shall sign, swear to and deposit with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due to the corporation, on the first day of August next preceding the date of such certificates, and the amount, as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.

LIABILITY FOR FAILURE TO FILE CERTIFICATES.⁵—When the officers or such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.⁶

SERVICE OF PROCESS.⁷—Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations.⁸

¹ Act 29 April, 1874, § 39, cl. 7; P. L. 102.

² *Supra*, p. 40, n. 3.

³ "A general comity, in the absence of positive direction to the contrary, obtains through the states and territories of the United States, by which corporations created in one state or territory are permitted to carry on any lawful business in another state and territory, and to acquire, hold and transfer property there equally as individuals. If the policy of the state or territory does not permit the business of the foreign corporation in its limits, or allow the corporation to acquire or hold real property, it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provision for the formation of similar corporations, or allows corporations to be formed only by general law." *Cowell v. Springs Co.*, 100 U. S. 59.

⁴ Act 29 April, 1874, § 39, cl. 8; P. L. 102.

⁵ *Id.*, cl. 9.

⁶ *Supra*, p. 113, n. 4; *Barber v. Standard Sewer Pipe Co.*, 5 Pa. C. Ct. Rep. 293.

⁷ Act 29 April, 1874, § 39, cl. 10; P. L. 103.

⁸ The acts relating to service of process on corporations are digested in *Purdon's Digest*, 354 *et seq.*

DISSOLUTION.¹—The Court of Common Pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations.²

SPECIAL STOCK—LIABILITY OF GENERAL STOCKHOLDERS.³—When special stock is created by any corporation, under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

INDIVIDUAL LIABILITY OF STOCKHOLDERS.⁴—The stockholders of any and all corporations, under this act shall be personally liable for all sums of money due to laborers, clerks and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment;⁵ and when judgment is obtained against any corporation for wages or labor due to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.

TREASURER'S ACCOUNTS.⁶—The treasurer of every manufacturing or mining company now incorporated or hereafter incorporated under any special or general law of this commonwealth, shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, under the penalty of fifty dollars for every day he shall fail to comply with said duty, to be recovered at the suit of any informer, in an action of debt; and every director of any such corporation who shall consent to such breach of duty, or, having knowledge thereof, shall not enter his protest on the minutes of the company, shall be liable to the same penalty, to be recovered in like manner.

POWERS AS TO REAL ESTATE.⁷—Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have or otherwise dispose of dwellings and other buildings; but no

¹ Act 29 April, 1874, § 39, cl. 10; P. L. 103.

² *Infra*, § 55.

³ Act 29 April, 1874, § 39, cl. 10; P. L. 103.

⁴ *Id.*, cl. 11.

⁵ *Supra*, p. 37–39. Statutes imposing a personal liability upon stockholders for corporate debts being in derogation of the common law are strictly construed: *Supra*, p. 38, n. 2: *Chase v. Lord*, 77 N. Y. 1, and the term “laborers” within the meaning of the statute includes only “Those who perform with their own hands, the contract they make with their employer,” thereby excluding civil engineers and their assistants, contractors and the like: *Heebner v. Chave*, 5 Pa. 115; *Seider's Appeal*, 46 Pa. 61; *Smith v. Brooke*, 49 Pa. 147; *Moyer v. Slate Co.*, 71 Pa. 296; *Wentroth's Appeal*, 82 Pa. 469; *Penna., etc., R. R. v. Leuffer*, 84 Pa. 168; *Brockway v. Innes*, 39 Mich. 47; *Peck v. Miller*, *Id.* 594.

⁶ Act 17 April, 1869, § 2; P. L. 71.

⁷ Act 29 April, 1874, § 39, cl. 12; P. L. 103.

power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders.

POWER TO CONDEMN LAND.¹—Companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act,² whether such companies shall have been organized under any special act of assembly or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough or city with water, shall have all the rights, privileges and powers conferred by the said eighteenth clause, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act.³

CORPORATION STORES.⁴—Every manufacturing, mining or quarrying company incorporated under the provisions of this act shall be confined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or article of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employees or officials to engage in the buying or selling upon the lands possessed by it of any wares, goods or commodities or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No such company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employees by reason of the sale or furnishing of goods, wares or merchandise by any person to such operatives or employees, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company from supplying to its employees oil, powder and other articles and implements necessary for or used in mining.⁵

AFTER EXPIRATION OF CHARTER MAY WIND UP AFFAIRS.⁶—All corporations for mining, manufacturing or trading purposes,

¹ Act 29 April, 1874, § 34, cl. 4, as amended by Act 12 June, 1879; P. L. 177.

² *Supra*, p. 12.

³ *Supra*, p. 50-54.

⁴ Act 29 April, 1874, § 43; P. L. 106.

⁵ The arbitration of disputes between employer and employees is regulated by Act 26 April, 1883, P. L. 15, known as "The voluntary trade tribunal Act of 1883."

⁶ Act 21 May, 1881; P. L. 30; Act 8 June, 1874; P. L. 278.

whether created by general or special acts of assembly, whose charters may have expired, or may hereafter expire, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to, or by, them, and sell, convey and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and if no officers survive, the stockholders may elect officers under their by-laws: *Provided*, That this act shall be construed only so as to enable said corporations to realize and divide their assets, and wind up their affairs, and not to transact new business.

47. Inclined Plane Railways.

¹The companies incorporated under the provisions of the act to which this act is a supplement,² for the erection and maintenance of incline plane railways operated by stationary engines, and the carriage of passengers and freight thereon shall, from the date of the letters-patent creating the same, be governed, managed and controlled as follows, and shall be entitled to the statute to which this is a supplement:

*Clause 1. GENERAL POWERS.*³—The directors of such corporation shall have full power and authority to appoint, agree and contract with such engineers, contractors, laborers and other persons, as they may think necessary, to make and construct or operate such incline plane and other buildings, and collect the fares hereinafter authorized, and fix their compensation, to purchase real estate in quantities not exceeding ten acres at any one time, and to sell and improve the same in such manner as they may determine, and to do and transact all other acts, matters and things, as by the by-laws of such corporation may be intrusted to them.

*Clause 2. OTHER CORPORATIONS MAY HOLD STOCK.*⁴—It shall and may be lawful for any incorporated company of this commonwealth or elsewhere, to subscribe and take shares of stock in any corporation incorporated for the purposes named in this act, or to purchase the bonds or stock, or guarantee the payment of said bond and the interest thereon.

¹ Act 1 May, 1876; P. L. 84.

² Act 29 April, 1874; P. L. 73.

³ Act 1 May, 1876; P. L. 84.

⁴ *Id.* *Supra*, p. 35.

*Clause 3. MAY PURCHASE OR CONDEMN LAND.*¹—Before the directors of any such corporation shall proceed to erect any such inclined plane or other buildings, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as may be necessary for the purpose of such inclined plane company; but in case they cannot agree, then proceedings shall be had for the condemnation of said lands as provided in section forty-one of the act to which this is a supplement.²

*Clause 4. RATES OF TOLL.*³—When said corporation shall have erected any inclined plane under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates, and demand such rates as the directors thereof, shall, from time to time, determine, not exceeding six cents for the carriage of each passenger, and for the carriages of freight, packages, et cetera, ten cents per hundred weight or fractional part thereof; the directors of said corporation to have power to determine the classes of freight to be carried, and they shall cause to be put up and kept in some conspicuous place in the station-houses of said inclined plane, an exhibit of the rates of fare fixed by them.

*Clause 5. PENALTY FOR DEMANDING ILLEGAL FARES.*⁴—If the said corporation, or any person employed by it, shall demand or collect any greater fares than are prescribed in the exhibit of fares put up in the station-house as aforesaid, he or it shall forfeit for every such offence the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half to be paid to the county and the other half to the person suing for the same.

*Clause 6. ACCOUNTS—DIVIDENDS.*⁵—Said corporation shall keep a just account of all moneys received by its agents, and after deducting all expenses and such proportion of the income as may be sufficient for a fund to provide against the decay, repairing and rebuilding of said plane, that time and accident may render necessary, shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice, personally or by advertisement, of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly in ten days thereafter, or as soon as the same shall be demanded.

*Clause 7. PROHIBITED ACTS—PENALTIES.*⁶—If any person shall

¹ Act 1 May, 1876; P. L. 84.

² *Supra*, p. 50-54.

³ Act 1 May, 1876; P. L. 84.

⁴ *Id.*

⁵ *Id.*

⁶ Act 29 April, 1874, § 46; P. L. 107.

break, pull down or destroy any part or parts of said inclined plane, or other property of the said corporation, or shall wilfully obstruct the passage in or to the said inclined plane, or any part or parts thereof, each such person shall forfeit and pay to the said corporation the sum of ten dollars for each and every such offence, to be recovered as other debts of a like amount are recoverable, and if any person shall be guilty of carrying any lighted cigar or pipe, or carrying fire into the station-houses and buildings of the corporations in any manner except in a lantern, or shall discharge any pistol or gun, or any fireworks in or near the buildings of the said company, each one so offending shall forfeit and pay the said corporation the sum of five dollars for every such offence, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the aforesaid offences unless commenced within thirty days after it shall be known who committed said offences, and he, she or they shall remain liable to action at the suit of the corporation for any of the wrongs enumerated in this clause, if the sums herein mentioned be not sufficient to repair or satisfy said damage.

*Clause 8. OBSTRUCTION OF CAUSEWAYS—PENALTIES.*¹—That the causeways or other approaches to the station-houses of any inclined plane chartered under the act to which this is a supplement, shall be deemed to be and taken as public highways and subject to the same penalties for obstruction thereof as may now or shall hereafter be enforced for the obstruction of public streets in the municipality in which said approaches may be located.

*Clause 9. COMMENCEMENT AND COMPLETION OF WORK.*²—If any company incorporated under this law for the purpose of erecting an inclined plane, as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters-patent, or shall not within the space of five years thereafter complete the same, the rights and privileges granted to the said corporation shall revert to the commonwealth.

48. Pipe Line and Petroleum Companies.

POWERS, RIGHTS AND DUTIES.³—All companies incorporated or hereafter to be incorporated under the provisions of the act to which this is a supplement, for the purpose of the transportation and storage of oil by means of pipe lines and tanks, for the public, shall have the power to take, hold, purchase and transfer such real and personal prop-

¹ Act 29 April, 1874, § 46; P. L. 107.

² Id.

³ Act 2 June, 1883, § 2; P. L. 62. See *supra*, p. 13, n. 4.

erty as the purposes of the corporation may require, not exceeding the amount limited by its charter, together with the right to appropriate and take lands, easements and rights of way for locating and constructing steam pumps, tanks, pump houses, and offices, and laying down its pipes or tubes, connections and branches, from any point or points in any of the counties in which pretroleum is produced to any railroad, canal, navigable river, port or city within this commonwealth, and for all necessary purposes of the corporation, including right to cross railroads, and the right to appropriate a right of way and locate its pipes or tubes, upon and over, under and across any lands, waters, streams, rivulets, roads, turnpike roads, canal or other public highway, not however, passing through any burying ground or place of public worship, or any warehouse, mill, manufactory, store or dwelling-house without the consent of the owner or owners thereof being first had and obtained : *Provided*, That when said pipe line is located through, over, under or upon the streets, lanes, alleys or highways within the corporate limits of any city or borough, the consent of the municipal authorities to said location shall be first had and obtained, which consent said municipal authorities are hereby empowered to give upon terms to be agreed upon by said city or borough authorities, and said corporation : *And provided further*, In case said pipes cross any railroad or canal the same shall be located under or above the same, so, however, as not to interfere with the use of the same : *Provided further*, That corporations organized under this act and its supplements, shall not take a fee in any lands acquired under any of its provisions, except such as are acquired by actual purchase, and that upon the abandonment for the purposes of transporting oil, any lands taken by any company organized under the act to which this is a supplement and its supplements, said lands so taken, otherwise than by actual purchase, shall revert to the original owners or their successors : *And provided further*, That any pipe line, so laying its pipes under the provisions of this act, in occupying any lands cleared and used for agricultural purposes, shall bury the same at least twenty-four inches below the surface, and if any line of pipe shall be laid over or through any waste or woodland, which shall afterwards be changed from waste or woodland to farming land, then it shall be the duty of the pipe line company to immediately bury the pipe, to the depth of at least twenty-four inches as aforesaid : *Provided*, That all pipe lines shall be laid above the flood lines, or beneath the bed, in crossing creeks and rivulets : *And provided further*, That any company laying a pipe line under the provisions of this act, shall be liable for all damages occasioned by leakage, breaking of pipes or tanks : *Provided further*, That all tanks erected for the storage or transportation of oil, shall be protected and surrounded by ditches and embankments, so that, in case said tanks should break or be broken, the oil stored cannot damage adjoining property.

ASSESSMENT OF DAMAGES—EMINENT DOMAIN.¹—In all cases, when under the provisions of this act, said corporation is permitted to take lands or property for the public purposes of said corporation, or to acquire a right of way easement for the purposes of locating its pipes or branches over, upon, under or across any lands, streams, rivulets, roads, turnpike roads, railroads, canals or other highways, and the said corporation cannot agree with the owner or owners of any such lands, road, turnpike road, railroad, canal or other highway or franchise, for the compensation proper for the damage done, or likely to be done to or sustained by any such owner or owners of said waters, streams, land, road, turnpike road, railroad land or other highways, which such corporation may enter upon, use in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the Court of Common Pleas of the proper county, on application thereto by petition, either by said corporation or the owner or owners, or any one in behalf of either, shall appoint seven discreet and disinterested freeholders, residents of the proper county, and appoint a time, not less than twenty (20), nor more than thirty (30) days thereafter for said viewers to meet at or upon the premises, where the damages are alleged to be sustained or the property taken, of which time and place ten days' notice shall be given by the petitioner to the said viewers and the other party and the said viewers, or any five (5) of them, having been first duly sworn or affirmed, faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and, having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams, property, easement, franchise or rights of way so taken, and shall award to the owner or owners thereof just compensation for the property taken, injured or destroyed by the construction or enlargement of such pipe lines, works and improvements: which compensation shall be paid or secured as hereinafter provided, before such taking, injury or destruction: *Provided*, That for any subsequent injury, taking or destruction of property, the owner or owners of the property taken, injured or destroyed, shall have the right to recover full compensation for such taking, injury or destruction, and an action for any subsequent injury or taking or destruction of property may be brought within the county in which the damages are sustained, and the summons may be directed to the sheriff of the county in which the corporation defendant may have its principal place of business, and service may be made upon the president, secretary or other officer in charge of said principal office, to have the same effect as if the said corporation defendant was resident within the proper county, and make report thereof to the said court; and if any damages be awarded,

¹ Act 2 June, 1883, § 3; P. L. 63.

and the report be confirmed by the said court, judgment shall be entered thereon : and if the amount thereof be not paid within thirty (30) days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded : and the costs and expenses so incurred, shall be defrayed by the corporation ; and each of said viewers shall be entitled to two dollars and fifty cents (\$2.50) per day, for each day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation : in all cases when the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, waters, water rights, franchises, rights of way, the corporations shall tender a bond, with at least two sufficient sureties, to the parties claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act : *Provided*, That in case the party or parties claiming damages refuse, or do not accept the bond tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bonds to the Court of Common Pleas of the county where the lands, streams, waters, rivulets, roads, railroads, turnpike roads, canals or other highways are ; and if the sureties and the amount of the bond be approved, the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereupon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question. The viewers provided for in this section may be appointed before or after the entry for constructing said work, and after the filing of the bond hereinbefore provided for, and upon the report of the said viewers, or any three of them, being filed in said court, either party, within thirty (30) days thereafter, may file his, her or their appeal from said report to said court ; after such appeal either party may put the cause at issue in the form directed by said court, and the same shall be tried by said court and a jury, and after final judgment either party may have a writ of error thereto from the Supreme Court, in the manner prescribed in other cases ; the said court shall have power to order what notices shall be given of the proceedings, and may make all such orders connected with the same, as may be deemed requisite ; if any exceptions be filed with any appeals to the proceeding, the same shall be speedily disposed of, and if allowed, a new view shall be ordered ; and if disallowed, the appeal shall proceed as before provided : *Provided further*, That when the term owner is used in the foregoing section to this act, or in this act in reference to an effort to agree with, or to the tender of a bond to, or service of notice upon the owner of

roads, railroads, turnpike roads, canals or other highways, the same shall be taken to mean the officers in charge of said road, railroad, turnpike road, canal or other public highways, on whom service of process could be made in any action at law or in equity : *Provided*, That all companies, organized under this act, shall have their terminus in Pennsylvania.

¹ Every corporation, company, association, person or persons, who are now engaged, or shall hereafter engage or continue, in the business of transporting or storing crude or refined petroleum, by means of pipe line or pipe lines, or storage by tanks, shall conduct such business in conformity with and subject to the provisions of this act.

ISSUING RECEIPTS FOR UNDELIVERED OIL PROHIBITED.²—No receipt, certificate, accepted order, or other voucher, shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the corporation, company, association, person or persons issuing or putting in circulation such receipt, certificate, accepted order or voucher, or incurring such liability.

DUPLICATE RECEIPTS.²—No duplicate receipt, certificate, accepted order or other voucher, shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher, shall be outstanding and uncanceled, except in case such original paper shall have been lost, in which case a duplicate plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued.

RE-ISSUE OF RECEIPTS.²—No receipt, voucher, accepted order, certificate, or written evidence of liability of such corporation, association, company, person or persons, on which petroleum, crude or refined, has been delivered, shall be re-issued, used or put in circulation.

SURRENDER OF RECEIPTS.²—No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered,

¹ Act 22 May, 1878, § 1; P. L. 104. These statutory provisions are stated to be applicable to any corporation who shall "*hereafter*" engage in transporting and storing petroleum by means of pipe lines or tanks. The statute is prior to the Act 2 June, 1883 (P. L. 62), authorizing the incorporation of pipe line companies under the Act of 1874.

² Act 22 May, 1878, § 2; P. L. 104.

except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof.

DUPLICATE RECEIPTS.¹—No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued, or put in circulation, until after notice of the loss of the original and of the intention to apply for a duplicate thereof, shall have been given, by advertisement over the signature of the owner thereof in at least four successive issues of a daily or weekly newspaper published in the county where such duplicate is to be issued.

CANCELLATION OF RECEIPTS.²—Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled, by stamping or puncturing the same across the face in large and legible letters with the word "cancelled," and giving the date of such cancellation, and it shall then be filed and preserved in the principal office of such corporation, association, company, person or persons.

WRITTEN ORDER OF OWNER WHEN NECESSARY.³—No corporation, association, company, or the officers or agents thereof, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove, or procure or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said corporation, association, company, person or persons engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof.

EXHIBITION OF MONTHLY STATEMENTS.³—Any corporation, association, company, and the officers, agents, managers and superintendents thereof, and any person or persons that are now or may hereafter be engaged or continue in the business of transporting by pipe lines or storing crude or refined petroleum, shall, on or before the tenth day of each month, make or cause to be made and posted in the principal business office where such corporation, company, association, person or persons is or are or may be engaged in business, in an accessible and convenient place, for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of said corporation,

¹ Act 22 May, 1878, § 2; P. L. 104.

² Id., § 3.

³ Id., § 5. The act omits a fourth section.

company, association, person or persons, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligible form the following details of the business :

First. How much petroleum, crude or refined, was in the actual and immediate custody of such corporation, company, association, person or persons, at the beginning and close of the previous month, and where the same was located or held, describing in detail the location and designation of each tank or place of deposit, and the name of its owner :

Second. How much petroleum, crude or refined, was received by such corporation, company, association, person or persons, during the previous month :

Third. How much petroleum, crude or refined, was delivered by such corporation, company, association, person or persons, during the previous month :

Fourth. For how much petroleum, crude or refined, such corporation, company, association, person or persons, were liable for the delivery or custody of to other corporations, companies, associations or persons, at the close of such month :

Fifth. How much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances.

The statement so required to be made, shall also be sworn to by said officers, agents, person or persons, before some officer authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such corporation, company, association, person or persons, and with the facts sworn to and that the statements made in the said report are true :

Sixth. That all the provisions of this act have been faithfully observed and obeyed during the said previous months.

¹ All amounts in the statements required by this act when the petroleum is handled in bulk, shall be given in barrels and hundredths of a barrel, reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum and give the amount of each.

MUST HAVE OIL ON HAND EQUAL TO CREDIT BALANCES.¹—Every corporation, company, association, person or persons engaged in the business aforesaid, shall at all times have in their tanks and pipes an amount of merchantable oil equal to the aggregate of outstanding receipts, accepted orders, certificates, vouchers, acknowledgments, evidences of liability, and credit balances upon the books thereof.

¹ Act 22 May, 1878, § 6; P. L. 104.

PUNISHMENT FOR VIOLATING ACT.¹—Any corporation, association, company, or officers or agents thereof, or person or persons, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation, or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this act, or shall do or cause to be done any of the acts prohibited by the second section of this act, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and undergo imprisonment not less than ten days nor exceeding one year.

² Any corporation, association, company, or officer or agent thereof, or person or persons, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed, from the tanks or pipes of such corporation, company, association, person or persons, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one thousand dollars, and undergo an imprisonment not less than ninety days and not exceeding two years.

³ Any corporation, association, company, person or persons, engaged in the business of transporting by pipe lines or storing petroleum, crude or refined, and each and every officer or agent of such association, corporation, company, person or persons, who shall neglect or refuse to make the report and statement required by the fifth section of this act, within the time and in the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report or statement required by said section five shall remain unposted as therein directed.

CERTIFICATES TO BE NEGOTIABLE.⁴—Accepted orders and certificates for petroleum, issued by any corporation or partnership association engaged in the business of transporting and storing petroleum in this state shall be negotiable, and may be transferred by indorsement, either in blank or to the order of another, and any person to whom the said accepted orders and certificates shall be so transferred, shall be deemed and taken to be the owner of petroleum therein specified.

¹ Act 22 May, 1878, § 7; P. L. 104.

² *Id.*, § 8.

³ *Id.*, § 9. The remainder of this statute appears to be partially supplied by the Act 5 of July, 1883, § 1; P. L. 186. *Infra*, p. 127 *et seq.*

⁴ Act 20 June, 1883; P. L. 127.

MUST PERMIT INSPECTION OF BUSINESS.¹—Every firm, association or corporation within this commonwealth, engaged in the business of storing and transporting crude or refined petroleum by means of pipe lines, shall, on or before the first day of July, next ensuing, and every firm, association or corporation that may hereafter engage in said business, shall, before engaging therein, file in the office of the secretary of the commonwealth a writing authorizing any person or persons who may be appointed to inquire into the condition of such firm, corporation or association under existing law or this act, or any law that may be hereafter enacted, to enter upon and have free access to the premises of such firm, association or corporation, whether the same may be in this or some other state, or partly in this and partly in some other state or states, for the purpose of inspecting and gauging the petroleum, crude or refined, that may be in the custody of said firm, association or corporation, and of examining the books, accounts and papers thereof relative to oil in its custody, and liability therefor, including oil owned by said firm, association or corporation. And the said writing shall extend to and embrace full permission to use the tools, implements and appliances of such firm, association or corporation, for the purposes of making such inspection and gauge, and shall grant full and absolute authority for the purposes hereof, and shall remain good and valid so long as such firm, association or corporation continue to do business in this state.

POWER AND DUTIES OF EXAMINER.²—The person or persons who may be appointed under any law of this commonwealth, to make such examination, gauge and inspection, shall produce to the secretary of this commonwealth a certificate attested by satisfactory proof of his or their appointment as such examiner or examiners, whereupon the secretary of the commonwealth shall issue to such examiner or examiners, a certified copy of the writing aforesaid, accompanied by a certificate countersigned by the governor, that the person or persons therein named have been duly appointed to make such examination, inspection and gauge as aforesaid, and to exercise, under the appointment of this commonwealth, the authority delegated under the writing aforesaid, for a period therein named, which shall not exceed thirty days; and it shall be the duty of any such firm, association or corporation, upon the production of such certificate and certified copy aforesaid to any of its officers or agents, to give, without delay, to such examiner or examiners free access to its offices and such books, papers, accounts as show the amount of oil in its custody, and for which it is liable, including oil owned by said firm, association, or corporation and its tanks, stations and other property, and to furnish information regarding the same. **PENALTY FOR OBSTRUCTING**

¹ Act 5 July. 1883, § 1; P. L. 186.

² Id., § 2; P. L. 187.

EXAMINER.—But if such firm, association or corporation, its officers or agents, shall refuse or deny access to or entry upon the premises of such firm, association or corporation, or shall in anywise hinder, obstruct or prevent said examiner or examiners from making an examination, gauge and inspection of the books, papers, accounts aforesaid, and of the tanks and pipes of said firm, association or corporation, or shall wilfully withhold information regarding the same, or deny the use of its tools and appliances for the purpose of making such examination, inspection and gauge, such refusal, hindrance, denial or obstruction shall work a forfeiture of the charter of any such corporation chartered by this commonwealth, or of the right to do business in this commonwealth, of any such firm, or association or foreign corporation, and in such case the right of such foreign corporation to bring suits in the courts of this state shall cease. **EVIDENCE OF EXAMINER'S AUTHORITY.**—In all cases where the tanks, pipes, books, offices, accounts and petroleum to be examined and gauged are situated in this state, it shall only be necessary for the examiner or examiners to produce to such firm, association or corporation, or to any of its officers or agents, a certificate of the court, or other lawful authority, appointing him or them, showing him or them to be duly accredited and lawful examiner or examiners.

PETITION BY OWNERS TO APPOINT EXAMINERS.¹—The owners of oil which is in the custody of any such firm, association or corporation, not less in the aggregate than two per centum of the amount of oil in the custody of such firm, association or corporation, as shown by its last preceding monthly statement, may, at any time, but not oftener than once in three months, present their petition to the Court of Common Pleas of the county wherein such firm, association or corporation may have its principal office, and of any foreign corporation to the Court of Common Pleas in any county in which said corporation may be doing business, or to any law judge of said court in vacation, setting forth, under oath, their ownership as aforesaid, and desire for the appointment of examiners for the purposes of this act, whereupon the court, or any judge thereof in vacation, shall forthwith appoint such number of impartial, disinterested and competent persons as may be necessary, not exceeding twenty-five, as examiners, one of whom shall be designated as chief, and the others shall be subordinates, and shall fix the amount of their compensation, which shall not exceed five dollars per day.

ORDER OF COURT.²—The court or judge by order shall direct and empower such examiners, under the supervision of their chief, to immediately inspect and measure all the petroleum, crude or refined,

¹ Act 5 July, 1883, § 3; P. L. 187.

² Act 5 July, 1883, § 4; P. L. 188.

in the custody of any such firm, corporation or association named in said petition, on the day or days of inspection, and to examine the books of such firm, association or corporation relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers or evidences of liability, and to its own accounts with persons, companies or corporations with whom it deals in the receipt or delivery of crude or refined petroleum. Such examiners, when appointed, shall immediately be sworn before any authorized officer, to perform his duties with fidelity and according to law, which oath shall be reduced to writing, signed and filed with the prothonotary, and they shall, then under supervision of the chief examiner, make immediate examination, gauge and inspection as required by said petition and order, and by this act.

DUTY OF SUCH EXAMINERS.¹—Upon the completion of such inspection, examination and measurement, it shall be the duty of the examiner or examiners, or in the event of the death, resignation or declination, or inability to act of any of them, then the others, or any of them within thirty days after their appointment, to make to the court appointing them, a written, signed and sworn report of such examination, inspection and measurement, and file the same of record with the prothonotary thereof, which report shall show :

First. How much merchantable, and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such firm, association or corporation, and where the same was located or held, by description of tanks, also the percentage of merchantable oil, mingled with the B. S. and sediment.

Second. For the custody or delivery of how much crude or refined petroleum they found such firm, association or corporation to be liable at the same date.

Third. How much of such liability was represented by outstanding receipts, accepted orders, certificates, vouchers or evidences of liability, and how much by credit balances.

PENALTY FOR FALSE REPORT.²—Any examiner appointed as aforesaid, who shall make any false examination, inspection, measurement, or report, or shall make known, directly or indirectly, to any person, any information he may become possessed of in the course of his examination, inspection and measurement, except by means of his report made and filed in accordance with this act, or who shall receive, directly or indirectly, any fee, reward or benefit, or the promise of any fee, reward or benefit, other than that provided by this act for the performance or non-performance of any duty or thing contemplated by this act, or connected with his said employment, shall be guilty

¹ Act 5 July, 1883, § 5; P. L. 188.

² Id., § 6; P. L. 189.

of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars, and to imprisonment not less than three months, nor more than two years.

PENALTY FOR OBSTRUCTING EXAMINERS.¹—Any officer, agent, manager, superintendent or employee of any such firm, corporation or association as aforesaid, who shall neglect or refuse, after demand made, to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books and vouchers as aforesaid, or deny to him the use of any tools or appliances required by him in pursuance of his appointment and this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars, and to imprisonment not exceeding one year.

FINES.²—All fines recovered from any person under this act, and all penalties, shall be paid to the proper officer for the use of the county wherein such suit is brought or prosecution instituted.

EXPENSES AND COMPENSATION.³—The examiners shall also file with their report an itemized and sworn statement of the entire expense incurred in making such examination, inspection and gauge, including their compensation, to be taxed as costs in other cases, and if allowed and approved by the court, the same shall be paid by the firm, corporation or association named in the petition, within twenty days, and upon its failure to do so, judgment may be entered forthwith in favor of the persons performing the services, for the amount due them, and against the said firm, corporation or association upon which execution may at once issue.

INSPECTOR OF OILS.⁴—Nothing contained in this act shall be construed to interfere with any law authorizing the appointment of an inspector of oils.

ACQUISITION OF COMPETING LINES PROHIBITED.⁵—No corporation, association, partnership or individual owning, operating or controlling any pipe line or lines, for the transportation of oil, shall acquire, either by purchase, lease, or otherwise, any competing pipe line, or the controlling interest in the stock or bonds of any competing pipe line, nor in any way, either directly or indirectly, control, operate or own any competing pipe line, or the controlling interest in the stock or bonds thereof.

¹ Act 5 July, 1883, § 7 · P. L. 189.

² Id., § 8.

³ Id., § 9.

⁴ Id., § 10.

⁵ Act 13 June, 1883, § 1; P. L. 93.

PENALTY FOR SUCH ACQUISITION.¹—Whenever any corporation, association, partnership or individual, owning, operating or controlling any pipe line or lines, for the transportation of oil, shall acquire by purchase, lease or otherwise any other competing pipe line, or a controlling interest in the stock or bonds of any such other competing pipe line, in violation of the provisions of this act, the stock and bonds so held, and the pipe line, together with all franchises so purchased, leased, controlled or otherwise acquired, and the earnings thereof, from the date of such purchase, lease or acquiring the controlling interest therein, shall be forfeited to, and become the property of the commonwealth.

HOW FORFEITURE DECREED.²—Whenever any pipe line franchises, property, stocks, bonds become forfeited and escheat to the Commonwealth under the first and second sections of this act, such forfeiture and escheat may be decreed, under proceedings by *quo warranto*, in any Court of Common Pleas in this state, from which decree any party interested may appeal to the Supreme Court, at any time within six months after such decree, and not afterward, and the court before which such proceedings are begun shall appoint a receiver, upon due cause shown, or require the defendant or defendants in such suit to execute bonds in sufficient amount, to be fixed and approved by the court, conditioned for the payment into court, on the termination of such litigation, of the earnings of such competing pipe line.

SALE.—After a final decree of the court establishing the forfeiture and escheat to the commonwealth, as provided in section three of this act, the court making such decree shall order the pipe line, franchises, stock and bonds so escheated, to be sold at public auction by the sheriff of the county after notice of said sale by publication, for four successive weeks, in one newspaper in each county through which the escheated pipe line passes, but in case said pipe line passes through but one county, then in two papers published in that county; and at said sale the said pipe line, franchises, property, stocks and bonds shall be sold to the highest and best bidder, on such terms as may be fixed by the court ordering such sale; and it shall be the duty of the sheriff making such sale, to give the auditor general and the attorney general at least twenty days' notice of the time and place of such sale. *Provided*, That no corporation, association, partnership or individual owning, controlling or operating any competing pipe line, or the controlling interest in the stock or bonds thereof, shall become a purchaser at such sale; and in case any corporation, association, partnership or individual owning, controlling or operating any competing pipe line, or the controlling interest in the stock or bonds thereof, should become the purchaser, at such sale, such purchaser shall be liable for the amount of his bid, but shall acquire no title in the property thus purchased.

¹ Act 13 June, 1883, § 2; P. L. 93.

² *Id.*, § 3.

DISTRIBUTION OF PURCHASE-MONEY.¹—That on the confirmation of the sale of such pipe line by the court, and the payment of purchase-money into court (or the cash payment fixed by the court), also the earnings of such pipe line [from] escheated as provided in section second of this act, the court shall appoint an auditor to distribute the same, which said distribution shall be as follows: First, The cost of the suit under which the sale took place, and costs of distribution. Second, The innocent stock and bondholders shall receive the market value of their stock and bonds, and interest thereon: *Provided*, Innocent stock and bondholders shall be construed to mean those who neither directly or indirectly, aided or consented, either by their acts or silence in the violation of sections one and two of this act. Third, The remainder shall be awarded to the Commonwealth of Pennsylvania.

WHEN LIENS INVALID.²—All mortgages, liens or encumbrances placed upon any pipe line by any corporation, association, partnership or individual, after the violation of the provisions of this act, or any mortgage, lien or encumbrance placed upon any pipe line by any corporation, association, partnership or individual, having in view the violation of the provision of this act, shall be and they are hereby declared null and void.

POWERS OF COURT TO ASCERTAIN FACTS.³—The courts shall have power to summon the officers of any such corporation, association or partnership, or either of them, or any individual by subpoena, citation or otherwise, as the said court shall direct, to appear before said court and produce all, or any of its, their or his books and papers, and to examine them or him, upon oath, to ascertain whether he, they or any of them have violated any of the provisions of this act, and shall have power to enforce his or their appearance, by attachment, as in case of other witnesses, or the said court may direct to be filed a bill of discovery in the said court, against the officers, directors, trustees, managers or individual owning, managing or controlling any such pipe line, or either of them, which said bill of discovery, the defendant or defendants therein, shall answer under the compulsion usual in such cases, and the evidence so taken and his or their answers, may be used in the said proceedings to assert the rights of the commonwealth.

RIGHTS AND DUTIES OF PURCHASERS.⁴—The purchaser or purchasers of any pipe line, sold under the provisions of this act, shall be entitled to all the franchises, rights and privileges enjoyed by such

¹ Act 13 June, 1883, § 5; P. L. 94. The act omits a fourth section.

² Id., § 6.

³ Id., § 7.

⁴ Id., § 8.

pipe line at and immediately before the violation of the provisions of this act. And it shall be the duty of such purchaser or purchasers to notify the secretary of the commonwealth, and the auditor general of such purchase, and the names and residence of the person or persons purchasing the same, within thirty days from the confirmation of such sale by the court. And upon the reorganization of such corporation, association or partnership (which shall be done under existing law, and within ninety days from and after the confirmation of such sale by the court), notice of such reorganization shall forthwith be given to the secretary of state and the auditor general: *Provided*, That all such reorganized corporations, associations or partnerships shall be subject to all the provisions of the constitution and laws of the commonwealth governing such corporations, associations and partnerships.

PETROLEUM MINING COMPANIES MAY DEAL IN STOCK OF OTHER COMPANIES.¹—Corporations incorporated under the provisions of the act entitled “An act to provide for the incorporation and regulation of certain corporations,” approved April twenty-ninth, Anno Domini one thousand eight hundred and seventy-four, for the purpose of mining for petroleum, may subscribe for, purchase, hold and dispose of stocks and bonds of any other corporation, incorporated under the said act for the same purpose, and may also subscribe for, purchase, hold and dispose of stocks and bonds of any corporation incorporated under the provisions of the act entitled “An act to provide for the incorporation and regulation of natural gas companies,” approved the twenty-ninth day of May, Anno Domini one thousand eight hundred and eighty-five. And may also subscribe for, purchase, hold and dispose of stocks and bonds in any corporations of other states incorporated for similar purposes: *Provided*, That the amount of such stock held by any corporation, together with the amount of its capital stock, shall not exceed in the aggregate, the amount to which the capital of such corporations is limited by the thirty-ninth section of the act to which this is a supplement.

49. Traction Motor and Cable Companies.

POWERS.²—That in addition to the corporations for profit of the second class, authorized to be created by the second section of an act, entitled “An act to provide for the incorporation and regulation of certain corporations,” approved April twenty-ninth, one thousand

¹ Act 3 May, 1889; P. L. 76.

² Act 13 June, 1883, § 6; P. L. 123. By the Act 22 March, 1887; P. L. 8, a special system is provided for the incorporation of companies for “The construction and operation of motors and cables, or other machinery for supplying motor power to passenger railways with necessary apparatus for supplying the above.”

eight hundred and seventy-four, corporations may be created for the construction and operation of motors and cables, and the necessary apparatus and mechanical fixtures for applying and operating the same, and said corporations may, in the manner provided in said act, increase their capital stock to an amount not exceeding the amount authorized therein, for mining and manufacturing companies, and such corporation shall have the power to enter upon any street in which a passenger railway now is or hereafter may be constructed, with the consent of said passenger railway, and may construct, maintain and operate thereon such motors, cables and necessary or convenient apparatus and mechanical fixtures, as will provide for the traction of the cars of said railway company : *Provided*, That in such construction it shall be subject to such reasonable regulations for the protection and convenience of public travel on said streets, as shall be ordained by the councils of the borough, town or city in which the same may be located ; said corporation shall also have power to receive and hold such real estate as may be necessary for its purposes, and such personal estate as may be acquired by it in the prosecution of its business, and to enter into contracts with passenger railway companies to construct, maintain and operate motors, cables and other appliances necessary for the traction of their cars, and to demand and receive as security therefor, mortgages by said companies of their railways and franchises, which mortgages the latter are hereby authorized to execute and deliver.

50. Reservoir, Driving and Floating Logs, Timber and Lumber Companies.

POWERS.¹—Corporations organized for the purpose of erecting reservoirs for the storage of water, construction of dams, transmission of power and the driving and floating of logs, timber and lumber on streams not exceeding twenty miles in length, or on the heads of all streams not exceeding twenty miles in length from their source, shall have power to clear out, improve and use any stream or the head of any stream not exceeding in length twenty miles from its source, to purchase dams and erect new dams thereon, may straighten, deepen, crib and widen such stream or the head of any stream for the distance aforesaid as they deem proper, and may generally use and manage the streams and the head of streams for the distance aforesaid and their improvements thereon, for the floating of logs, lumber and timber thereon, by both natural and artificial floods, in their discretion, but in such manner as not to obstruct the descending navigation by rafts and boats : *Provided*, That in case where the heads of streams more than twenty miles in length are

¹ Act 22 June, 1883, § 2, as amended by Act 21 May, 1889, § 2 ; P. L. 260.

improved under the provisions of this act, no tax or tolls shall be charged on timber or logs passing through, banked or floated from below such improvements: *Provided further*, That the corporation owning such improvements shall not be required to operate or furnish the use of such improvements for driving or floating timber or logs, unless the owners of such timber or logs consent to pay the tolls provided for in this act: *Provided further*, That a majority of the stock in any such corporation shall at all times be held by the persons owning lands drained by such streams.

IMPROVEMENTS TO BE FOR PUBLIC BENEFIT—TOLLS.¹—The improvements of corporations organized for the floating of logs, lumber and timber as aforesaid, and the use of the streams so to be controlled by them, shall be for the public benefit, so that all persons shall have the right to have their logs, lumber and timber floated in such streams, with the aid of said improvements, subject, nevertheless, to the payment of such reasonable tolls and charges therefor as said corporation or its proper officers may require, not in any case to exceed ten cents per thousand feet board measure: *And provided*, That the control of such improvements shall, at all times, be in the hands of said corporations.

ASSESSMENT OF DAMAGES—EMINENT DOMAIN.²—Companies incorporated for the purpose of floating and driving logs, timber and lumber on and over any stream shall, before commencing the driving or floating on or over any stream, agree with the owner or owners of any mill or saw-mill dams upon such stream or streams, and the owners of land adjoining such streams, for compensation for any damages that may be occasioned by reason of the erection of splash dams on said streams, and the driving and floating of logs, timber and lumber thereon; and when such company cannot agree with the owner or owners for such dams, or riparian owners for the damages aforesaid, by reason of incapacity or otherwise, then the damages done or likely to be done to such owner or owners, shall be assessed, and the right of possession and use of the such stream or streams acquired under the forty-first section of the act to which this is a supplement.

BOND.³—Before any such corporation for the floating of logs, lumber and timber shall enter upon and exercise any control over any stream under this act, they shall file in the Court of Common Pleas of the proper county a bond in such sum and with such sureties as shall be approved by the said court, or by the president judge

¹ Act 22 June, 1883, § 3; P. L. 157.

² Id., § 4; P. L. 158.

³ Id., § 5.

thereof in vacation, conditioned to indemnify all and every person whose property may be injured by reason of the construction and operation of the improvements of said corporation.

¹ Nothing in this act contained shall be held to authorize the taking or injuring of private property for a private use, nor to affect in any way any suit at law or in equity now pending.

51. Associations for Prevention of Cruelty to Children and Aged Persons.

² In addition to the corporations not for profit of the first class, authorized to be created by the second section of the corporation act of one thousand eight hundred and seventy-four, there may be formed, under the provisions of said act and the several supplements thereto, associations for the prevention of cruelty to children and aged persons, and said associations shall have the power to receive and hold such real and personal estate, as may be necessary for their purposes: *Provided*, That the clear yearly value or income of the real estate so held shall not exceed an amount equal to twenty thousand dollars.

³ Any corporation so formed, as provided in the first section of this act, shall have power to apply to the governor of the commonwealth to commission such persons, as the said corporation may designate, to act as policemen for said corporation.

⁴ The governor, upon such application, may appoint such persons, or either of them, as he may deem proper, to be such policemen, and shall issue a commission to such persons to act as such policemen.

⁵ Every policeman so appointed shall, before entering upon the duty of his office, take and subscribe the oath required by the seventh article of the constitution before the recorder of the county in which said corporation is located, which oath, after being duly recorded by said recorder, shall be filed in the office of the secretary of the commonwealth; and such policemen, so appointed, shall severally possess and exercise all the powers of a policeman, in any county in which they may be directed by said corporation to act, and the keepers of jails, lock-ups, station-houses, in any of said counties, are required to receive all persons arrested by such policemen for the commission of any offense for the cruelty of children and aged persons, and to be dealt with according to law.

¹ Act 22 June, 1883, § 6; P. L. 158.

² Act 25 May, 1887, § 1; P. L. 265.

³ *Id.*, § 2.

⁴ *Id.*, § 3.

⁵ *Id.*, § 4.

¹ It shall be the duty of the secretary of the commonwealth to issue a certificate showing the appointment of any such persons as policemen, as aforesaid, which certificate shall be evidence of the authority of said person to act as policemen, as aforesaid, in any of the counties of this commonwealth.

² The compensation of such police shall be paid by the corporation for which the policemen are respectively appointed, as may be agreed upon between them.

³ When any corporation shall no longer require the service of any policeman, so appointed as aforesaid, it may file a notice to that effect, under its common corporate seal, attested by its secretary, in the office of the secretary of the commonwealth, and thereupon the power of such policeman shall cease and be determined.

52. Ship Building and Ship Transportation Companies.

MAY INCREASE CAPITAL STOCK.⁴—It shall be lawful for any corporation organized for the building of ships, vessels and boats, and carriage of persons and property thereon, to increase the capital stock of said corporation to any sum not exceeding five million dollars, which said capital shall be divided into shares of not more than one hundred dollars each, and all subscriptions to the capital stock of such corporation shall be paid in such instalments, and at such times, as the directors may require.

PROPERTY MAY BE TAKEN IN PAYMENT OF INCREASED STOCK.⁵—It shall be lawful for any corporation increasing its capital under the provisions of this act, to take such real and personal estate, mineral rights, patent rights and other property, as is necessary for the purposes of its organization and business, in payment for subscriptions to the stock so issued, and the stock so issued after payment made of the full par value thereof, shall be declared and be full paid stock, not liable to any further calls or assessments, and the holders of stock so full paid shall not be liable in their individual capacity for any of the debts of the corporation, except for debts due to laborers, mechanics or clerks for services rendered while in the employ of the corporation, and in that case for no period exceeding six months.

¹ Act 25 May, 1887, § 5; P. L. 265.

² Id., § 6.

³ Id., § 7.

⁴ Act 17 April, 1889, § 1; P. L. 37.

⁵ Id., § 2.

53. Secretary of Commonwealth to Publish List of Charters.

¹ It shall be the duty of the secretary of the commonwealth to prepare and publish, with every edition of the pamphlet laws, a certified list of all charters of incorporation filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose and location of every such corporation, and he shall prepare and publish a complete alphabetical index to the same.

54. Repeal of Prior Acts.

² From and after the passage of this act, the acts of the general assembly, entitled "An Act to encourage manufacturing operations in this commonwealth," approved April seventh, one thousand eight hundred and forty-nine; ³ "An Act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this commonwealth, to manage and develop the same," approved April twenty-first, one thousand eight hundred and fifty-four; ⁴ "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three; ⁵ "An Act to provide for the incorporation of iron and steel manufacturing companies," approved March twenty-first, one thousand eight hundred and seventy-three, ⁶ and the several supplements to each of said acts, be and the same are hereby repealed, so far as they provide for the creation of corporations for any of the purposes provided for by this act, or are inconsistent with this act.

55. Dissolution.

VOLUNTARY DISSOLUTION.⁷—It shall be lawful for any Court of Common Pleas of the proper county to hear the petition of any corporation under the seal thereof, by and with the consent of a majority of a meeting of the incorporators, duly convened, praying for permission to surrender any power contained in its charter, or for the dissolution of

¹ Act 29 April, 1874, § 45; P. L. 107.

² Id., § 46.

³ P. L. 563.

⁴ P. L. 437.

⁵ P. L. [1864] 1102.

⁶ P. L. 28.

⁷ Act 9 April, 1856; P. L. 293. The act extends to corporations incorporated by the legislature as well as to those incorporated by the courts: *Com. v. Slifer*, 53 Pa. 71; *Re Credit Mobilier*, 10 Phila. Rep. 2.

such corporation; and if such court shall be satisfied that the prayer of such petition may be granted without prejudice to the public welfare, or the interests of the corporators,¹ the court may enter a decree in accordance with the prayer of the petition, whereupon such power shall cease or such corporation be dissolved: *Provided*, That the surrender of any such power shall not in anywise remove any limitation or restriction in such charter; and that the accounts of the managers, directors, or trustees of any dissolved company shall be settled in such court, and be approved thereby;² and dividends of the effects shall be made among any corporators entitled thereto, as in the case of the accounts of assignees and trustees: *Provided further*, That no property devoted to religious, literary or charitable uses shall be diverted from the objects for which they were given or granted;³ *Provided*, That the decree of said court shall not go into effect until a certified copy thereof be filed and recorded in the office of the secretary of the commonwealth.

⁴ The "proper county" intended by said act, approved as aforesaid,⁵ may be, at the option of any corporation praying for permission to dissolve in the way and manner in said act designated, either the county in which the principal operations of the corporations are conducted, or that county in which its principal office or place of business is located:⁶ *Provided*, That notice of said application shall be given, by publication in two papers in the county in which the principal operations are conducted, and that in which the principal office is located.⁷

¹ And if the contrary appear, or the matter be doubtful, the application will be refused: *Re Credit Mobilier*, 10 Phila. Rep. 2; *Riddell v. Fire Co.*, 8 Phila. Rep. 310.

² Where a corporation was a lessee under a long term, the effect of the liability for future rent as preventing distribution of the assets in voluntary liquidation under the English statutes was much mooted in *Gooch v. London Bkg. Ass'n*, Law Rep. 32 Ch. Div. 41.

³ Upon the dissolution of a charitable organization, its assets belong to the public, and unless authorized by special legislation, a distribution amongst the corporators is a breach of trust: *Humane Fire Co.'s Appeal*, 6 Weekly Notes Cas. 442.

⁴ Act 4 April, 1872; P. L. 40.

⁵ The Act of 9 April, 1856, *ubi supra*.

⁶ One of these alternatives must be shown: *Re Credit Mobilier*, 10 Phila. Rep. 2.

⁷ In practice publication is usually required once a week for three weeks: *Re Phila. Straw Braid Co.*, 6 Pa. C. Ct. Rep. 65; *Re Ashton Mfg. Co.*, 22 Weekly Notes Cas. 23.

Apart from the above provisions as to voluntary dissolution, it is well settled that an adverse dissolution will not be decreed by reason of the neglect or omission to elect officers, if the power to elect remains in the corporate members: *Rose v. Turnpike Co.*, 3 Watts, 46; *Com. v. Cullen*, 13 Pa. 133; nor by obtaining a charter from another sovereignty: *Com. v. Railroad Co.*, 58 Pa. 26; although it is otherwise when the corporation constantly and wilfully violates its franchises: *Com. v. Bank*, 23 Pa. 383; and when acts amounting to dissolution of the corporation are sought to be taken advantage of, it is clear that the charter cannot be collaterally attacked (*supra*, p. 33, n.), and that a forfeiture for abuse or neglect of the fran-

NO DISSOLUTION UNTIL PAYMENT OF TAXES.¹—No corporation, company, joint stock association, association or limited partnership, made taxable by this act, shall hereafter be dissolved by the decree of any Court of Common Pleas, nor shall any judicial sale be valid or a distribution of the proceeds thereof be made until all taxes due the commonwealth have been fully paid into the state treasury, and the certificate of the auditor general, state treasurer and attorney general to this effect filed in the proper court with the proceedings for dissolution or sale.

SALE OF REAL ESTATE AFTER DISSOLUTION.²—Whenever it has occurred or shall happen that any corporation has been or shall be dissolved, whether by decree of court, expiration of time or otherwise, owning land or other real estate within this commonwealth, it shall and may be lawful for the Court of Common Pleas of the county, wherein the real estate is or shall be located, upon the petition of any one or more of the shareholders or corporators, and personal notice to and service upon all known parties in interest whose place of residence are known, and such further notice by advertisement to others interested, as the court may direct, if no reasonable and sufficient cause be shown to the contrary, to authorize the sale of such real estate in fee simple, at either public or private sale, upon such terms as the court may designate, by a trustee to be appointed for that purpose; which trustee, before making such sale, shall give security, for the faithful application of the proceeds of such sale according to law, to be approved by the court in double the probable value of the land to be sold, and the proceeds of such sale shall be distributed by the party making the same, as part of the effects of the defunct corporation to creditors or shareholders, as the said court may adjudge them to be entitled, and if said corporation had made sale of real estate, and had not conveyed the same, such court may decree conveyance in specific execution of such contract in manner aforesaid: *Provided*, That the petition aforesaid shall be presented within one year, and decree granted thereon within three years, after the aforesaid dissolution; except in cases where the dissolution has occurred prior to the passage of this act, when the petition shall be presented within one year, and decree granted thereon within three years from and after the passage of this act.

chises must be declared by process and judgment of law before the corporation can be treated as defunct: *Lehigh Bridge Co. v. Navigation Co.*, 4 Rawle, 24. The dissolution or expiration of a corporation at law works a technical abatement of its debts: *Building Ass'n, v. Anderson*, 7 Phila. Rep. 106; *Cooper v. Oriental Ass'n*, 100 Pa. 405; but this has been remedied by the Act of 1881, as to all corporations for mining, manufacturing or trading purposes (*supra*, p. 116), and in *Kisterbock v. Ass'n*, 7 Phila. Rep. 185, a corporation mortgagee was held entitled to bring *scire facias* against the corporation whose charter had expired—the syllabus of this case is not correct.

¹ Act 1 June, 1889, § 32; P. L. 437.

² Act 25 June, 1885; P. L. 178.

56. Purchasers of Corporate Franchises.

WHEN PURCHASERS OF CORPORATE FRANCHISES CONSTITUTE CORPORATION.¹—Whenever the material, rolling stock, property and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation, created by or under any law of this state, shall be sold and conveyed, under and by virtue of any process or decree of any court of this state or of the Circuit Court of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust, without any process or decree of a court in the premises, the person or persons for or on whose account such material, rolling stock, property and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation, created by or under any law of this state, may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim and demand in law and equity, of, in and to such material, rolling stock, property or franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation, created by or under any law of this state, with the appurtenances, and with all the rights, powers, immunities, privileges and franchises of the corporation, as whose the same may have been so sold, and which may have been granted to or conferred thereupon, by any act or acts of assembly whatsoever, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby.²

DUTIES AND POWERS OF PURCHASERS AND NEW CORPORATIONS.³—And the person for or on whose account any such material, rolling stock, property and franchises of any gas, water, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation, created by or under any law of this state, may have been purchased, shall meet, within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given, at least once a

¹ Act 31 May, 1887; P. L. 278, amending and extending Act 25 May, 1878 (P. L. 145) and Act of April, 1861; P. L. 269.

² The lien of the commonwealth for unpaid taxes is discharged by judicial sale, and the purchasers need not pay the same prior to reorganizing: *Re Continental Ins. Co.*, O. A. G., 2 Chester Co. Rep. 90.

³ Act 31 May, 1887; P. L. 278, amending and extending Act 25 May, 1878; P. L. 145.

week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors (to continue in office until the first Monday of May succeeding such meeting, when and annually thereafter on the said day a like election for a president and six directors shall be held to serve for one year,) and shall adopt a corporate name¹ and common seal, determine the amount of the capital stock thereof, not exceeding the amount authorized in the original charter, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each, and may then or at any time thereafter create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time to issue bonds, at a rate of interest not exceeding six per centum, to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof: *Provided*, That no coal, iron, steel, lumber, or mining, manufacturing, transportation or telegraph company, shall have the benefit of this act, unless it shall have previously filed, with the secretary of state, its acceptance of all the provisions of the constitution, as provided by law.²

RETURN TO STATE DEPARTMENT.³—It shall be the duty of such corporation, within one calendar month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its president and directors, and transmit the said certificate to the secretary of state, at Harrisburg, to be filed in his office and there remain of record; and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.⁴

ACCEPTANCE OF CONSTITUTION.⁵—The provisions of this act shall not inure to the benefit of any corporation unless such corpo-

¹ They may adopt the former name; *Re Prince's Metallic Paint Co.*, O. A. G., 13 April, 1888.

² The act presupposes the existence of a corporate franchise which becomes vested in the new corporation, and irregularities in the organization of this new corporation are not necessarily fatal to its being: the case differs from an original grant of corporate rights where the grantee must take the franchise upon the terms offered, and hence the directions in regard to subsequent organization are not conditions of existence: *Comm'th v. Railway Co.*, 52 Pa. 506; *Wellsborough Co. v. Griffin*, 57 Id. 417.

³ Act 25 May, 1878, § 2; P. L. 146.

⁴ The duties of the secretary are simply ministerial: *Re Prince's Metallic Paint Co. v. O. A. G.*, 5 Pa. County Ct. Rep. 194.

⁵ Id., § 3.

ration shall, before claiming or using the benefits of this act, file in the office of the secretary of the commonwealth, an acceptance of the provisions of article sixteen of the constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees or other proper officers of such corporation, certified under the seal of the corporation; and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

PURCHASERS OF CERTAIN CORPORATIONS MAY ISSUE STOCK AND BONDS.¹—In all cases in which the property and franchises of any corporation, mentioned in the act and its supplement to which this is a further supplement,² or of any telegraph company, may have been or shall hereafter be purchased at any sale, by virtue of any process or decree of any court of this commonwealth or the Circuit Court of the United States, or under or by virtue of a power of sale contained in any mortgage, or deed of trust, without any process or decree of a court in the premises, the person or persons, for or on whose account the same may have been or shall hereafter be purchased, shall have power and authority to determine the amount of the capital stock and bonds to be issued therefor, and to issue therefor certificates for the said capital stock, and also bonds, and secure the same by mortgage or mortgages on the real and personal property, corporate rights and franchises purchased. Such stock or bonds, or both, shall be issued to the purchaser or purchasers for their respective interests, in such amounts and proportions as may be determined by themselves, and shall be deemed and taken to have been issued for and in consideration of the property and franchises so purchased and received: *Provided*, That no railroad, canal or other transportation company, or telegraph company, shall have the benefit of this act, unless it shall have previously filed, with the secretary of state, its acceptance of all the provisions of the constitution of this state, in manner and form as provided by law.

PREVIOUS PROCEEDINGS VALIDATED.³—That in all cases in which the property and franchises of any corporation mentioned in the act and its supplements, and to which this is a further supplement, or of any telegraph company, have been sold, by virtue of any [*process*] or decree of any court of this commonwealth or the Circuit Court of the United States, and the person or persons for or on whose account the same have been purchased, have organized a cor-

¹ Act 25 May, 1878, § 1; P. L. 148, as amended by Act 31 May, 1887; P. L. 276.

² *Viz.*: Railroad, canal, turnpike, bridge or plank road companies: Act 8 April, 1881; P. L. 259.

³ Act 25 May, 1878, § 2; P. L. 148.

poration under the provisions of said act, and have issued stock and bonds to the purchaser or purchasers for their respective interests, secured by mortgage, in such amount and proportions as may have been determined and agreed upon by them, such issues are hereby ratified, approved and confirmed.

ACCEPTANCE OF CONSTITUTION.¹—The provisions of this act shall not inure to the benefit of any corporation, nor shall they be considered as validating or confirming any act heretofore done by any corporation, unless such corporation shall, before claiming or using the benefits of this act, file in the office of the secretary of the commonwealth, an acceptance of the provisions of article sixteen of the constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors or trustees or other proper officers of such corporation, certified under the seal of the corporation; and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

¹ Act 25 May, 1878, § 3; P. L. 148.

APPENDIX.

FORMS.

List of Forms.

CORPORATIONS OF THE FIRST CLASS.

- Certificate of Incorporation.
 - Advertisement.
 - Proof of Publication and Residence.
 - Decree.
 - Record.
- Amendments to Charter.
 - Interlocutory Decree.
 - Advertisement.
 - Final Decree.

CORPORATIONS OF THE SECOND CLASS.

- Suggestions on Corporation Business.
- Certificate of Incorporation.
 - Approval by the Governor, Enrolment and Record.
 - Advertisement.
 - Proof of Publication.
 - Letters-Patent.
- Charter for Trust Company.
 - Road Company.
 - Ferry, Wharf or Bridge Company.
 - General Telegraph Company.
 - Private Telegraph Company.
 - Water, Gas Light, Electric, Heat and Fuel Companies.
 - Iron and Steel Companies.
 - Mining Company.
 - Manufacturing Companies.
 - Building and Loan Associations and Mutual Saving Funds.
- Acceptance of Act of 1879 by Building and Loan Associations and Mutual Saving Funds.
 - Resolutions of Stockholders.
 - Certificate of Acceptance.
- Charter for Foreign Corporation becoming Domestic.
 - Certificate of Company.
- Charter for Natural Gas Companies.
- Acceptance of Act of 1889 by Electric Light, etc., Companies.
- Proceedings upon Increase of Capital Stock.
 - Resolution of Board of Directors.
 - Advertisement.

Proceedings upon Increase of Capital Stock.

Oath of Judges.

Return of Election.

Return of Increase of Stock.

Affidavit.

Waiver of Publication of Notice.

Acceptance by Title and Trust Companies of Act of 1889.

Amendment to Charter.

Re-Organization by Purchasers after Sale.

Acceptance of Constitution and Acts of Assembly.

Statement of Foreign Corporation.

GENERAL FORMS.

Re-Charter.

Certificate of Company.

Dissolution of Corporation.

Petition.

Affidavit.

Decree.

CORPORATIONS OF THE FIRST CLASS.**I. Certificate of Incorporation,¹**

Be it known that the subscribers,² having associated themselves together for the purpose of and being desirous of becoming incorporated agreeably to the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, and its supplements, do hereby declare, set forth and certify that the following are the purposes, objects, articles and conditions of their said association, for and upon which they desire to be incorporated:

I. The name of the Corporation shall be

II. The purpose for which the Corporation is formed is

III. The place where the business of the said Corporation is to be transacted is

IV. The Corporation is to exist [either "*perpetually*," or "*for the term of* *years*."]

¹ *Supra*, pp. 15-19.

² Five or more must subscribe, three of whom at least must be citizens of Pennsylvania.

V. ¹The names and residences of the subscribers, and the number of shares subscribed by each are as follows :

NAME.	RESIDENCE.	NO. OF SHARES.
-------	------------	----------------

VI. The Corporation is to be managed by a Board of Directors [*or Trustees*], consisting of _____ members and the names and residences of those chosen Directors [*or Trustees*] for the first year are

NAME.	RESIDENCE.
-------	------------

VII. ²The amount of the capital stock of the said Corporation is _____ dollars, divided into _____ shares of the par value of _____ dollars.

VIII. The yearly income of the Corporation, other than that derived from real estate, will not exceed the sum of _____ dollars.³

Witness our hands and seals this _____ day of _____ Anno Domini one thousand eight hundred and ⁴

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

Commonwealth of Pennsylvania, } ss.
County of _____

Before me, the subscriber, Recorder of Deeds of the County of _____ personally appeared _____ three of the subscribers to the above and foregoing certificate of incorporation of _____ and in due form of law acknowledged the same to be their act and deed.

Witness my hand and official seal this _____ day of _____ Anno Domini

¹ If the proposed corporation is not a stock company, this article will be " V. The names and residences of the subscribers are as follows :

NAME.	RESIDENCE.
-------	------------

The corporation has no capital stock."

² If not a stock company, this article will be omitted.

³ *In re St. Luke's Church*, 41 Leg. Int. 74; *In re Mary Elizabeth Patterson Church*, Id. 253. *Supra*, p. 16, n. 5.

⁴ In an application for a charter for a religious society there must, in addition to the above requirements, also be a provision securing the control and disposition of the real and personal property to the lay members thereof as required by the Act of 26

Advertisement.¹

In the Court of Common Pleas, No. for the County of
Of Term No.

Notice is hereby given that an application will be made to the said Court on 189 , at 10 A. M., under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, 1874, and the supplements thereto, for the Charter of an intended Corporation to be called the character and object whereof is and for these purposes to have, possess and enjoy all the rights, benefits and privileges of the said Act of Assembly and its supplements.

The proposed charter is now on file in the Prothonotary's office.
Solicitor.

Proof of Publication and Residence.²

In the Court of Common Pleas No. of County
Of Term No.

[Insert printed copy of Advertisement.]

being duly says that the above advertisement has been published for three weeks in and two newspapers of general circulation printed in the County of and has also been published for three weeks in *[legal publications required by local statutes and rules of court.]* and further that three of the subscribers to the said Charter herewith presented, viz. : are citizens of the Commonwealth of Pennsylvania.

and subscribed before me this
day of A. D.

April, 1855, as amended by Act 2 June, 1887 ; P. L. 298 : *In re* St. Luke's Methodist Episcopal Church, 41 Leg. Int. 74 ; *Trustees v. Harrison*, 12 Weekly Notes Cas. 32 ; *supra*, p. 15, n. 4.

¹ *Supra*, p. 17.

² *Supra*, p. 17, 18.

Decree.¹

[To be endorsed on Charter.]

In the Court of Common Pleas No. of
 Of Term 189 No.

And now this day of A. D. 189 , the within Charter and Certificate of Incorporation having been presented to me, a Law Judge of said County, accompanied by due proof of publication of the notice of this application as required by the Act of Assembly and rule of this Court in such case made and provided,² I certify that I have examined and perused the said writing, and have found the same to be in proper form, and within the purposes named in the first class specified in Section Second of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29th, 1874, and the supplements thereto, and the same appearing to be lawful and not injurious to the community, I do hereby on motion of Esquire, on behalf of the petitioners, order and direct that the said Charter of aforesaid be and the same is hereby approved, and that upon the recording of the same and of this order, the subscribers thereto and their associates shall be a Corporation by the name of for the purposes and upon the terms therein stated.

[L. S.]

Recorded in the office for Recording of Deeds, in and for the
 County of in Book page

Witness my hand and seal of office this day of Anno
 Domini 189 .

[L. S.]

*Recorder of Deeds.*II. Amendments to Charter.³

To the Honorable Judges of the Court of Common Pleas,
 No. of County

¹ *Supra*, p. 18, 19.² If this application is made in a county wherein no rule of court exists, these words will, of course, be omitted.³ *Supra*, p. 55.

The Petition of

Respectfully Represents :

That it is an association duly incorporated under the laws of the Commonwealth of Pennsylvania, by
on the day of A. D. for the purpose of
and is embraced within the Corporations of the first class, specified in section second of an Act of the General Assembly of this Commonwealth, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved on the 29th day of April, A. D. 1874. That in pursuance of the provisions of the said Act of the General Assembly, the said Association is desirous of improving, amending and altering the articles and conditions of its said Charter, and at a meeting of the said Corporation duly convened, the following improvements, amendments and alterations of the said Charter were duly adopted :—
[Specify alterations.]

Interlocutory Decree.¹

In the Court of Common Pleas No. of
County

In the matter of the amendment of the Charter of The
And now this day of 189 , the foregoing amendment and alterations of the Charter of having been duly presented to this Court in order that the same might be deemed and taken to be part of the Charter of the said Corporation, and it appearing that such amendments and alterations are lawful and beneficial, and do not conflict with the requirements of the Act of the General Assembly of this Commonwealth, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the 29th day of April, 1874, nor with the Constitution of this State, it is hereby ordered and decreed that notice thereof shall be given by publication in accordance with the statute in such case made and provided.

Per Curiam.

Advertisement.²

In the Court of Common Pleas No. of Philadelphia County,
Of Term 189 , No. .
Notice is hereby given that an application will be made to the said Court on at 10 A. M., under the Act of Assembly

¹ *Supra*, p. 55.

² *Supra*, p. 17, 55. The certificate should be lodged in the Prothonotary's office, pending its advertisement.

of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, 1874, and the supplements thereto, for the approval of certain amendments to the Charter of
as set forth in the petition for the allowance of said amendments,
filed in said Court.

Solicitor.

Final Decree.¹

And now this day of
A. D. 189 the within amendments, alterations and improvements,
having been presented to this Court accompanied by due proof of
publication of notice thereof, and no cause having been shown to the
contrary, it is on motion of Esquire,
ordered and decreed that upon the recording of the same, the said
amendments, alterations and improvements shall be deemed and
taken to be part of the Charter of the said Corporation.

Per Curiam.

¹ *Supra*, p. 55, 56.

CORPORATIONS OF THE SECOND CLASS.

Suggestions on Corporation Business.

PREPARED BY THE SECRETARY OF THE COMMONWEALTH.

Notices.

The notice of an intention to apply for a charter should give the names of five subscribers to the certificate of organization, and designate a time when the application will be made. The time stated should not fall within twenty-one days after date of first publication nor upon Saturday (the State Treasury being closed on that day).

Notice must be given in two newspapers of general circulation, and not in legal or technical publications.¹

Filing of Certificate.

The certificate of organization should be on file in this office during the period of publication. This greatly facilitates business, as applications are examined when received, and needed changes or corrections may thus be made before maturity of notice of application.

Re-advertisement will be required on applications not received within thirty days of the time designated in the notice.

Contents of Certificate.

The purpose of the corporation should be stated concisely, and diverse purposes should not be combined in one application.

The rights to be enjoyed need not be enumerated.

The place of business designated should be the location of the principal office, that is, where the corporate functions are to be exercised.

The treasurer should not be named as a director, these offices being incompatible.

Protests and Hearings.

Protests against the issuing of letters-patent upon any application should be filed in this office as soon after the first publication of notice as practicable. The protest should briefly set forth the ground of opposition and the interest of the protestants, and must be specific, giving the full and correct name of the company against whose application it is filed, and designating the date when the application is advertised to be made.

A day for hearing will then be appointed, at which time all parties will be heard by counsel or in person.

¹ That is, publication in the legal paper, if any is required, must be in addition to the two newspapers of general circulation.

Increase and Decrease of Stock and Indebtedness.

Returns of election upon increase or decrease of capital stock should not be combined with the returns of election upon increase or decrease of indebtedness. The return of the president or treasurer as to the actual making of the authorized increase or decrease should be made separately from the election return and not attached thereto, and is required by law to be made within thirty days after the actual increase or decrease.

In case of increase the return should specify the terms thereof, whether for cash, for materials, labor or property.

Waivers of notice of publication should be accompanied by the affidavit of the proper officer, showing that the persons subscribing the waiver are the owners of all the capital stock of the corporation.

Co-operative Associations.

Co-operative associations are corporations, and are subject to all the requirements of the corporation laws as to bonus and fees due the state. The amount of the original capital must be specified in the articles of association. The purpose of the association and the terms upon which persons may become members should be clearly and succinctly stated.

Foreign Corporations.

Foreign corporations doing business in this state are required by law to file a statement of the location of their office in this state and name of agent, and when either is changed a new statement must be filed.

Bonus and Fees.

The first instalment of bonus on capital stock is payable through this office by all corporations except railroad, turnpike, bridge and cemetery companies, and building and loan associations, and checks or drafts therefor should be to the order of the "State Treasurer;" all other checks and drafts should be to the order of the "Secretary of the Commonwealth."

Blank Forms.

Blanks for applications for charters, proofs of publication, increase or decrease of capital stock or indebtedness, and statements by foreign corporations will be furnished on application to the Secretary of the Commonwealth.

CHAS. W. STONE,
Secretary of the Commonwealth.

I. General Charter.²

To the Governor of the Commonwealth of Pennsylvania :

Sir :

In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned,³ of whom are citizens of Pennsylvania,⁴ having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters-patent may issue to them and their successors according to law, do hereby certify :

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of⁵

Third. The business of said corporation is to be transacted in

Fourth. Said corporation is to exist for the term of _____ years.

Fifth. The names and residences of the subscribers and the number of shares subscribed by each, are as follows :

NAME.	RESIDENCE.	NO. OF SHARES.
-------	------------	----------------

Sixth. The number of Directors of said corporation is fixed at _____ and the names and residences of the directors who are chosen directors for the first year, are as follows :

NAME.	RESIDENCE.
-------	------------

Seventh. The amount of the Capital Stock of said Corporation is \$ _____ divided into _____ shares of the par value of \$ _____, and \$ _____, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said Corporation, whose name and residence are :

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

¹ All forms marked "Form A" with the number, will upon application be furnished by the Department of the Secretary of the Commonwealth.

² *Supra*, p. 14, 21.

³ Five or more must subscribe.

⁴ At least three of the subscribers must be citizens of Pennsylvania.

⁵ Different classes of business provided for under separate clauses of class two cannot be joined in the same charter: *supra*, p. 11, n. 2; 15, n. 4. Different classes of business provided for by any one clause may be joined when expressly authorized.

⁶ If any portion of the stock is issued in consideration for property conveyed to the company [*supra*, p. 40] the following clause will be here added :

State of Pennsylvania, }
County of } ss.

Before me, the Recorder of Deeds, in and for the county aforesaid, personally came the above named who in due form of law acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the
day of A. D. 189

Recorder.

State of Pennsylvania, }
County of } ss.

Personally appeared before me, this

day of A. D. 189 ,

who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me, the day and year aforesaid.

Recorder.

[Endorsed on Charter.]

EXECUTIVE CHAMBER.

Harrisburg,

189

To the Secretary of the Commonwealth.

Having examined the within application and found it to be in proper form, and within the purposes of the class of Corporations specified in section two of the act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, A. D. 1874, and the several supplements thereto,

I hereby approve the same, and direct that Letters-Patent issue according to law.

Governor.

"Of the stock subscribed for by [A. B.] shares are issued as full paid stock in consideration of the conveyance by him to the company herein incorporated of [set forth particularly the property conveyed] and for all his rights, title and interest therein the said [A. B.] being the owner thereof and the same being necessary for the purposes of the organization and business of the corporation hereby created and the stock being issued for the value of the property so conveyed and in payment thereof."

It will be observed

1. The property for which the stock is issued must be *necessary* for the purposes of the company: *supra*, p. 40.

2. The whole stock cannot be issued for such property, but ten per cent. thereof must be paid in cash, excepting in building and loan associations: *supra*, p. 19, 40, n. 6.

Advertisement.¹

Notice is hereby given that an application will be made to the Governor of the State of Pennsylvania on the day of 189 , by [*insert the names of the subscribers*] under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, 1874, and the supplements thereto, for the Charter of an intended Corporation, to be called

the character and object whereof is and for these purposes, to have, possess and enjoy all the rights, benefits and privileges of the said Act of Assembly and its supplements.

Solicitor.

FORM A.—No. 3.

Proof of Publication.

[*Attach copy of notice here.*]

[*Attach copy of notice here.*]

State of Pennsylvania, } ss.
County of

being duly sworn, doth depose and say :
That he is one of the corporators of the
That a notice of which the above are copies, was published in
and in both newspapers
of general circulation, printed and published in the county of
in the State of Pennsylvania.

That said notice was published to wit .

In the on the days
of 189

In the on the days
of 189 .²

Sworn and subscribed to before me, this
day of 189 .

¹ *Supra*, p. 17.

² Also insert in the legal publication, if any, required by local statutes.

[*Endorsed on Charter.*]

SECRETARY'S OFFICE.

Pennsylvania, ss.

Enrolled on Charter Book No. Page

Witness my hand and seal of office at Harrisburg, this
day of A. D. 189

Secretary of the Commonwealth.

Recorded in the office for Recording of Deeds, etc., in and for the
county of in Book page etc.

Witness my hand and seal of office, this day of
Anno Domini 189

[L. S.]

Recorder of Deeds.

FORM A.—No. 7.

II. Letters-Patent.

In the name and by authority of the Commonwealth of Pennsylvania,

Executive Department.

To all to whom these presents shall come, greeting :

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, and the supplements thereto, the Governor of this Commonwealth is authorized and required to issue Letters-Patent to all Corporations formed under the provisions of said acts, embraced within the second class named therein.

And Whereas, The stipulations and conditions in said act of the General Assembly and the supplements thereto have been fully complied with by

Therefore, know ye, That under authority of the Constitution and laws of said Commonwealth in such case made and provided I do by these presents, which I have caused to be made patent and sealed with the Great Seal of the State, create, erect and incorporate the subscribers to the stock of said corporation, their associates and suc-

cessors, and also those who may thereafter become subscribers or holders of the stock of the said corporation, into a body politic and corporate in deed and in law by the name chosen and hereinbefore specified, who shall have succession and shall be invested with and have and enjoy all the powers, privileges and franchises incident to a corporation and be subject to all the duties, requirements and restrictions specified and enjoined in and by the said acts of the General Assembly and all other laws of this Commonwealth.

Given under my hand and the Great Seal of the State, at the City of Harrisburg, this day of in the year of our Lord one thousand eight hundred and [L. s.] and of the Commonwealth the one hundred and .

By the Governor :

Secretary of the Commonwealth.

III. Charters for Trust Companies.

The purpose of a Company formed to enjoy the privileges and powers conferred by the Act of 9 May, 1889 (P. L. 159), should be stated in the language of the 29th section of the Corporation Act (*supra*, p. 62), the proper conclusion being "and for that purpose to have and enjoy all the powers and privileges conferred upon such Companies by the said Act of Assembly and the various supplements thereto." The powers conferred by the supplement of May 9, 1889, must be acquired after incorporation in the manner prescribed by that act. See form, *infra*, p. 175.

IV. Charter for Road Company.¹

[*The form is the same as the General Charter, supra, p. 154, save that as part of the second article must be inserted*]—

- a. The kind of road intended to be constructed is
- b. The places from and to which the road is intended to be run are as follows :
- c. The counties through which the road is to pass are and the estimated length of the road is

[*The rest of the charter is similar to the General Charter from the third article. Supra, p. 154.*]

¹*Supra*, p. 65.

V. Charter for Ferry, Wharf or Bridge Company.¹

[The form is the same as the General Charter, supra, p. 154, save that as part of the second article must be inserted]—

- a. The stream over [or on] which the _____ is proposed to be erected [or located] is _____
- b. The place and county wherein the _____ is to be located is _____
- c. The distance of the _____ from the nearest [wharf, ferry or bridge] company, incorporated under the laws of this Commonwealth, over [or on] the said stream is _____

VI. Charter for General Telegraph Companies.²

[The form is the same as the General Charter, supra, p. 154, save that as part of the second article must be inserted]—

- a. The general route of the line of telegraph is as follows :—
- b. The points to be connected are _____

VII. Charter for Telegraph Companies for Private use, and Police, Fire Alarm and Messenger Business.³

[The form is the same as the General Charter, supra, p. 154, save that as part of the second article must be inserted]—

- a. The Counties in this State wherein it is proposed to carry on business are _____
- b. The Corporation also proposes to carry on business in the States of _____

or

- b. The business of the corporation will be carried on wholly within the State of Pennsylvania.

VIII. Charter for Water, Gaslight, Electric, Heat and Fuel Companies.

The purpose of a water, gaslight or electric company must define the territory to be supplied, which must not exceed a single municipal division. Heat and fuel companies under the Act of 1887 may

¹*Supra*, p. 78.

²*Supra*, p. 85.

³*Supra*, p. 89, 90.

include territory not exceeding a single county, but it must appear upon the face of the papers that all the districts named are contiguous and practically form one municipal division. This must also be shown by depositions or by a map of the proposed district. The supply of water to the public cannot be combined with the supply of water and water-power for commercial and manufacturing purposes; the latter is a distinct business.

Companies incorporated to supply gas for light only cannot be empowered to supply light and power by electricity and *vice versa*.

IX. Charter for Iron and Steel Companies.

Corporations formed for the purpose of enjoying the powers conferred by the 38th section of the act should state their purpose, in clause two of the certificate, as nearly as may be in the language of clause XVII of class two,¹ not mentioning any article proposed to be made. A proper conclusion for the purpose is "and for that purpose to have and possess the powers and privileges expressed and given in the 38th section of the Corporation Act of 1874, and the supplements thereto."

X. Charter for Mining Companies.

The charter of a mining company must disclose the minerals to be mined for. Mining coal and manufacturing coke may be combined in the same charter. Mining for various metals may be combined in one charter, stating each; the phrases "other minerals" or "other ores" are inadmissible. The conclusion may be the same as for a manufacturing company.

XI. Charter for Manufacturing Companies.

The purpose of a manufacturing company must state the articles proposed to be made, and these must be harmonious in character. Indefinite terms should not be used, and the phrase "buying and selling" is not admissible as part of the purpose, except for a petroleum company under the Act of 9 April, 1873 [P. L. 66]. A manufacturing company cannot have any of the powers conferred on a patent-right company, although it may be stated in the purpose that the company is to hold such patents as may be necessary for carrying on its business. A Company incorporated for manufacturing specified articles cannot be empowered to manufacture and sell the machinery by which these articles are made. A proper conclusion for the purpose is "and for that purpose to have and possess the powers and privileges expressed and given in the 39th section of the Corporation Act of 1874 and the supplements thereto."

¹ *Supra*, p. 12.

FORM A.—No. 15.

XII. Charter for Building and Loan Associations and Mutual Saving Funds.¹

To the Governor of the Commonwealth of Pennsylvania :

Sir :

In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, _____ of whom are citizens of Pennsylvania, having associated themselves together for the purpose of organizing a building and loan association, and desiring that they may be incorporated, and that Letters-Patent may issue to them and their successors according to law, do hereby certify :

First. The name of the proposed corporation is _____

Second. Said corporation is formed for the purpose of accumulating a fund by the periodical contributions of the members thereof, and of safely investing the same.

Third. The business of said corporation is to be transacted in _____

Fourth. Said corporation is to exist for the term of _____ years.

Fifth. The names and residences of the subscribers and the number of shares subscribed by each are as follows :

NAME.	RESIDENCE.	No. OF SHARES.
-------	------------	----------------

Sixth. The number of Directors of said corporation is fixed at _____ and the names and residences of the directors who are chosen directors for the first year are as follows :

NAME.	RESIDENCE.
-------	------------

Seventh. The amount of the Capital Stock of said corporation is \$ _____ divided into _____ shares of the par value of \$ _____

Eighth. That in accordance with the provisions of an act entitled "An Act relating to Mutual Saving Fund, Building and Loan Associations, regulating the mode of charging premiums, bonus or interest in advance, of withdrawals, of repayment and collection of loans, also restricting the power to levy excessive fines, and defining the rights and liabilities of married women, stockholders, and prescribing the non-application to these associations of the bonus tax

¹ *Supra*, p. 98.

and registry laws for corporations," approved April 10, 1879; the premium or bonus bid for the prior right to a loan shall ["*be deducted therefrom in advance,*" or "*paid in periodical instalments,*" or "*interest in advance shall be deducted from the loan in lieu of premiums or bonus.*"]¹

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

State of Pennsylvania, }
County of } ss.

Before me, the Recorder of Deeds in and for the county aforesaid, personally came the above named [*three or more of the subscribers*] who in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my Hand and Seal of office,
the day of

A. D. 189

Recorder.

State of Pennsylvania, }
County of } ss.

Personally appeared before me, this day of A. D. 189, [*the foregoing three or more subscribers*] who, being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me,
this day of

A. D. 189

Recorder.

[*Advertisement and proof of publication as supra, p. 156.*]

[Endorsed.]

EXECUTIVE CHAMBER,

Harrisburg,

189

To the Secretary of the Commonwealth :

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations

¹ *Supra*, p. 99.

specified in section two of the act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, A. D. 1874, and an act, entitled, "An Act relating to Mutual Saving Fund, Building and Loan Associations," etc., approved April 10, 1879,

I hereby approve the same, and direct that Letters-Patent issue according to law.

Governor.

[*Endorsed.*]

SECRETARY'S OFFICE,

Pennsylvania, ss.

Enrolled in Charter Book No. _____, page _____

Witness my Hand and Seal of office at Harrisburg,
this _____ day of _____ A. D. 189 _____

Secretary of the Commonwealth.

[Record in proper county.]

XIII. Acceptance of Act of 10 April, 1879, by Mutual Saving Fund and Building and Loan Associations.

RESOLUTIONS OF STOCKHOLDERS.

Resolved, That this association hereby accepts the provisions of an act, entitled "An Act relating to Mutual Saving Fund, Building and Loan Associations, regulating the mode of charging premiums, bonus, or interest in advance, of withdrawals, of repayment and collection of loans; also restricting the power to levy excessive fines, and defining the rights and liabilities of married women, stockholders, and prescribing the non-application to these associations of the bonus tax and registry laws for Corporations," approved April 10, 1879.

Resolved, That this association further certifies, as required by the ninth section of said act, that their mode or plan of charging premiums, bonus, or advance interest, as set forth in the first section of said act is [*as stated supra*, p. 99].

Resolved, That the president be and he is hereby instructed to file in the office of the Secretary of the Commonwealth a certificate in writing, under the seal of said Corporation, of the acceptance by this association of the aforesaid act of the General Assembly, praying that the same may be submitted to the Governor for his approval, and for the issuance of letters-patent to said association.

FORM A.—No. 19.

Certificate of Acceptance.

To the Governor of the Commonwealth of Pennsylvania.

I, _____, president of the _____ association,
 incorporated on the _____ day of _____ A. D. 18 _____, and
 under the provisions of an act of the General Assembly of the
 Commonwealth of Pennsylvania, entitled "An Act

approved the _____ day of _____ A. D. 18 _____, and
 having its location and place of business in _____
 and State of Pennsylvania, do hereby certify under the seal
 of the said corporation,

That at a meeting of the stockholders of said association, held
 pursuant to due and legal notice, at the office of the said association,
 in _____ on the _____ day of
 A. D. 18 _____, at which meeting

of the stockholders of said association were present, when the fol-
 lowing resolutions were adopted :

Resolved, That this association hereby accepts the provisions of
 an act, entitled "An Act relating to Mutual Saving Fund, Building
 and Loan Associations, regulating the mode of charging premiums,
 bonus, or interest in advance, of withdrawals, of repayment and
 collection of loans ; also restricting the power to levy excessive fines,
 and defining the rights and liabilities of married women, stockhold-
 ers, and prescribing the non-application to these associations of the
 bonus tax and registry laws for corporations," approved April 10,
 1879.

Resolved, That this association further certifies, as required by the
 ninth section of said act, that their mode or plan of charging pre-
 miums, bonus, or advance interest, as set forth in the first section of
 said act is

Resolved, That the president be and he is hereby instructed to file
 in the office of the Secretary of the Commonwealth a certificate in
 writing, under the seal of said corporation, of the acceptance by this
 association of the aforesaid act of the General Assembly, praying
 that the same may be submitted to the Governor for his approval,
 and for the issuance of Letters-Patent to said association.

In testimony whereof, I have hereunto set my Hand and caused
 the Seal of said association to be affixed this _____ day of
 A. D. 189 _____.

[SEAL,]

President.

Attest :

Secretary.

[*Endorsed.*]

EXECUTIVE CHAMBER,

Harrisburg,

A. D. 189 .

I hereby approve of the within acceptance, and direct that Letters-Patent issue according to law.

Governor.

Filed in the office of the Secretary of the Commonwealth, at
Harrisburg, on day of A. D. 189 .

*Secretary of the Commonwealth.***XIV. Certificate for Foreign Corporation becoming Domestic.¹**

To His Excellency,

The Governor of the Commonwealth of Pennsylvania.

Sir :

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to authorize foreign Corporations to become Corporations of Pennsylvania, and to prescribe the mode of their so doing," approved the 9th day of June, 1881 : The undersigned, The a Corporation created under the laws of the State of doing business in the Commonwealth of Pennsylvania, having [*three or more*] stockholders who are citizens of Pennsylvania, and being embraced within Corporations of the second class, as defined in section two of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the 29th day of April, A. D. 1874, and desiring to become a Corporation of the State of Pennsylvania and that letters-patent therefor may issue to it and its successors according to law, hereby certifies

I. The name of the Corporation is

II. Said Corporation is formed for the purpose of

III. The business of said Corporation is to be transacted in

IV. The term for which the said Corporation is to exist is

¹ *Supra*, p. 22-24.

V. The names and residences of the stockholders and the number of shares held by each, are as follows :

NAME.	RESIDENCE.	NO. OF SHARES.
-------	------------	----------------

VI. The number of Directors of the said Corporation is and the names and residences of the Directors elected for the current year are as follows :

NAME.	RESIDENCE.
-------	------------

VII. The amount of the capital stock of said Corporation is \$, divided into shares of the par value of \$, and \$, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said Corporation,¹ whose name and residence are

VIII. The legislation under which the Corporation was originally created was

IX. The present financial condition of the said Corporation is

- a. Capital stock paid in
- b. Funded debt
- c. Floating debt
- d. Estimated value of property
- e. Cash assets.

[L. S.]

Attest,

President.

Secretary.

I President of do hereby certify that at a meeting of the stockholders of the said company held pursuant to due and legal notice at the office of the company in on the day of A. D. 189 , a majority in interest of the said Corporation, viz.: the holders of shares of stock, adopted the following resolution :

Resolved, That the stockholders of this company do hereby consent to the application for a charter under the laws of the Commonwealth of Pennsylvania, and the President and Secretary be and they are

¹ See *supra*, p. 22; n. 2.

hereby authorized to affix the corporate seal thereto ; and that this Corporation do renounce its original charter and all privileges not enjoyed by Corporations of its class under the laws of the Commonwealth of Pennsylvania aforesaid.

In testimony whereof I have set my hand and caused the Seal of
the said Corporation to be affixed this day of
A. D. 189 .

[L. s.]

Attest,

President.

Secretary.

State of Pennsylvania, } ss.
County of

Before me, the Recorder of Deeds in and for the county aforesaid,
personally came three of the Directors of the
aforesaid, who in due form of law acknowledged
the foregoing instrument to be the act and deed of the said Corpora-
tion for the purposes therein specified.

Witness my hand and seal of office, the day of
A. D. 189 .

Recorder.

State of Pennsylvania, } ss.
County of

Personally appeared before me, this day of
A. D. 18 , the above named
who being duly sworn according to law, depose and say that they
are Directors of the and that the statements con-
tained in the foregoing instrument are true.

Sworn and subscribed before me, this
day of A. D. 189

Recorder.

[Endorsed.]

EXECUTIVE CHAMBER.

Harrisburg,

189 .

To the Secretary of the Commonwealth.

Having examined the within application and found it to be in pro-
per form, and within the purposes of the class of Corporations speci-

fied in section two of the act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April 29, A. D. 1874,

I hereby approve the same, and direct that letters-patent issue according to law.

Governor.

[*Endorsed.*]

SECRETARY'S OFFICE.

Pennsylvania, ss.

Enrolled in Charter Book No. , Page

Witness my hand and seal of office at Harrisburg,
this day of A. D. 189 .

Secretary of the Commonwealth.

Recorded in the Office for the Recording of Deeds, etc., in and for
the County of in Book
page , etc.

Witness my hand and seal of office this
day of A. D. 189 .

Recorder of Deeds.

[L. s.]

FORM A.—No. 27.

XV. Charter for Natural Gas Company.¹

To His Excellency,

Governor of Pennsylvania.

Sir :

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of natural gas companies," approved the 29th day of May, A. D. 1885, the undersigned of whom are citizens of Pennsylvania, having

¹ This is not embraced within the Act of 1874 or its supplements (*supra*, p. 90, n. 3), but appears here for convenience.

associated themselves together for the purpose of producing, dealing in, transporting, storing and supplying natural gas, and desiring that they may be incorporated, and that letters-patent may issue to them and their successors according to law, do hereby certify :

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of producing, dealing in, transporting, storing and supplying natural gas.

Third. The place or places where natural gas is intended to be mined for and produced or received

Fourth. The place or places where it is to be supplied to consumers :

Fifth. The general route of its pipe-line or lines and branches is :

Sixth. The general office of said corporation is to be located in

Seventh. Said corporation is to exist for the term of years.

Eighth. The names and residences of the subscribers and the number of shares subscribed by each are as follows :

NAME.	RESIDENCE.	No. OF SHARES.
-------	------------	----------------

Ninth. The number of Directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the first year, are as follows :

NAME.	RESIDENCE.
-------	------------

Tenth. The amount of the Capital Stock of said Corporation is \$, divided into shares of the par value of \$, and \$, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose name and residence are :

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

State of Pennsylvania, }
County of } ss.

Before me, the Recorder of Deeds, in and for the county aforesaid, personally came the above-named , who in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the
day of A. D. 189 .

monwealth, issued under the provisions of an act entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, dated the day of A. D. 18 , hereby files its Letters-Patent and certifies under the seal of the company :

That the stockholders of said Corporation, at a meeting duly held, have accepted and hereby do accept the provisions of an act entitled, "An Act to amend an act entitled 'An Act to provide for the Incorporation and Regulation of certain Corporations,' approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, providing for the Incorporation and Regulation of Electric Light, Heat and Power Companies," approved the eighth day of May, Anno Domini one thousand eight hundred and eighty-nine, and have authorized and directed the execution and filing of this certificate and the surrender and filing herewith of its Letters-Patent for the purpose of having new Letters-Patent issued to said Corporation.

And it is hereby further certified and declared as follows :

I. That the name of the said company is

II. That the said company is formed for the purpose of supplying light, heat and power by electricity to the public at the of and to such persons, partnerships and corporations residing therein or adjacent thereto as may desire the same.

III. The business of said company is to be transacted in the

IV. Said company is to exist

V. The amount of the capital stock of said company is dollars, divided into shares of the par value of dollars each.

In testimony whereof, The Company has hereunto affixed its corporate seal and caused this certificate to be signed and attested by its President and Secretary, this day of A. D. 189 .

President.

[L. s.]

Attest,

Secretary.

State of Pennsylvania, } ss.
County of

Be it remembered, That on the day of A. D. 189 , before me, in and for said county, personally appeared President, and Secretary, of the Company,

who, being duly sworn, depose and say, that they were personally present at the execution of the above written certificate, and saw the common seal of the said Corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above written instrument or certificate was duly signed, sealed and delivered by and as and for the act and deed of the said company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the President and as the Secretary of the said Corporation in attestation of the due execution and delivery of the said certificate are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above written.

Witness my hand and

seal.

FORM A.—No. 28.

XVII. Proceedings upon Increase of Capital Stock.

Office of the

189 .

I hereby certify, that the following resolution was adopted at a meeting of the Board of Directors of this company, held on the
day of 189 ,

Resolved, That a meeting of the stockholders be called to convene at the general office of the company, on the day of to take action on the approval or disapproval of the proposed increase of the of said company from \$ to \$ and that the Secretary be and he is hereby directed to give notice thereof as required by law.

Attest,

Secretary.

[L. S.]

[Attach copy of Notice.]

State of Pennsylvania, }
County of } ss.

being duly sworn, doth depose and say, that he is, of the
That a notice, of which the above is a copy, was published in the , a newspaper of general circulation. printed and

published in the county of _____, State of Pennsylvania,
 once a week, for sixty days, commencing on the _____ day of
 189

Sworn and subscribed before me, this
 day of _____ A. D. 189

State of Pennsylvania, }
 County of _____ } ss.

On this _____ day of _____ A. D. 189, personally
 appeared before me, a _____ in and for the county aforesaid,

_____ stockholders,
 duly appointed judges, by the Board of Directors of the _____

Company to conduct an election of said company, to be held on the
 day of _____, 189, who being duly sworn or
 affirmed, do depose and say that they will well and truly, according
 to law, conduct said election to the best of their ability, and true
 return make of the same.

Sworn and subscribed before me,]
 the day and year aforesaid.

Judges.

We, the undersigned judges appointed by the Board of Directors
 of the _____ to conduct an election by the
 stockholders thereof, for or against an increase of the
 of the said company from \$ _____ to \$ _____, do hereby certify
 that after being duly sworn, we held the said election at the office of
 the said company, on the _____ day of _____ 189, the
 time and place fixed for holding the same, of which sixty days' pre-
 vious notice by publication was duly given, and in due form and
 manner we received the votes of the stockholders of the said com-
 pany in favor of or against such increase. And at the said election
 there were voted in favor of said increase _____ shares, and
 against said increase _____ shares, thereby evincing the con-
 sent to the said increase of _____ of the persons or bodies
 corporate holding the larger amount in value of the capital stock of
 the said company.

Judges.

FORM A.—No. 29.

Return of the President or Treasurer.

To the Secretary of the Commonwealth.

This is to certify that by virtue of the consent of the stockholders of the _____ Company, authorizing an increase in the capital stock thereof, from \$ _____ to \$ _____, given at an election duly held for that purpose, on the _____ day of _____ A. D. 189 _____, the capital stock of said Company has been increased from \$ _____ to \$ _____ said additional stock being issued for

[L. s.]

State of Pennsylvania, }
County of _____ } ss.

_____ above named,
being duly sworn, says the facts set forth in the above certificate are correct and true.

Sworn and subscribed before me this
_____ day of _____ A. D. 189 _____

Waiver of Publication of Notice and Formal Stockholders' Meeting.

Office of the

Philadelphia,

189 _____

I hereby certify that the following resolution was adopted at a meeting of the Board of Directors of this Company, held on the _____ day of _____ 189 _____,

"Resolved, That a meeting of the Stockholders be called to convene at the general office of the Company to take action on approval or disapproval of the proposed increase of the capital stock of said Company, from \$ _____ to \$ _____ and that the Secretary be and is hereby directed to give notice thereof as required by law."

Attest,

Secretary.

189 _____

The undersigned, stockholders in the _____ who are all the stockholders therein and holders of all the stock of said Company to the amounts set opposite our several names herein,¹ to wit :

do hereby waive the sixty days' notice of the meeting of the stockholders called for _____ 189 , required to be given by the seventh section of the sixteenth article of the Constitution of the State of Pennsylvania, [and do hereby signify by this paper, our assent to the increase of the capital stock of said Company from \$ _____ to \$ _____ and desire that the same may be taken as our vote in favor thereof]² with like effect as if all the provisions of the Act of Assembly, entitled " An Act to provide for the Incorporation and Regulation of certain Corporations," approved 29th April, 1874, relative to increase of capital stock, had been fully complied with.

State of Pennsylvania, }
County of _____ } ss.

I, _____ Secretary of the _____ being duly sworn, do depose and say that I am the Secretary of the said Company, that the stock ledger of said Company is in my custody and under my control and that the list of Stockholders given in the above waiver of notice, of a meeting to be held to vote for or against an increase of stock, is a complete list of such stockholders and that they are owners of the entire issue of the stock of said Company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

Sworn and subscribed before me,
this _____ day of _____ 189 . }
[SEAL]

XVIII. Acceptance by Title and Trust Companies of Act of 9 May, 1889.

_____, a corporation of the Commonwealth of Pennsylvania, incorporated under and by virtue

¹ The State Department has ruled as follows:

This waiver can only be made by persons holding stock in their own right. Attorneys-in-fact cannot execute a waiver unless their power of attorney expressly confers such power. Fiduciaries can only execute waivers when the stock stands in their name and the *cestui que trust* is not disclosed. Executors cannot, merely by virtue of their office, execute a waiver.

² To avoid possible future questions it is more advisable to have a formal election when time will permit, and in such cases the words marked with brackets will be omitted and in place substitute "and agree that said meeting and election may be held on _____."

of an Act of Assembly of the said Commonwealth, approved the Twenty-ninth day of April, A. D. 1874, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," and the supplements thereto, hereby certifies under its common or corporate seal.

That at a called meeting of the Directors of said Corporation, held at its principal office in the _____, Pennsylvania, on the _____ day of _____, A. D. one thousand eight hundred and _____, the following resolutions were adopted :

"*Resolved*, That this Corporation accepts the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved May 9, A. D. 1889, entitled 'An Act supplementary to an Act entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all Corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate, mortgagees and others interested in real estate from loss by reason of defective titles, liens and incumbrances.'"

"*Resolved*, That the President and Secretary be and they are hereby authorized and directed to make, under the corporate seal, a certificate of the acceptance as aforesaid of said act, and to file the same in the office of the Secretary of the Commonwealth."

That in pursuance of said resolutions the said corporation _____, hereby accepts the aforesaid Act of Assembly of said Commonwealth, approved May 9, 1889, entitled "An Act supplementary to an act entitled 'An Act to provide for the Incorporation and Regulation of certain Corporations,' approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate, mortgagees and others interested in real estate from loss by reason of defective titles, liens and incumbrances."

Witness the corporate seal of the said
 , duly attested, this day of
 ; A. D. one thousand eight hundred and
 by

President.

[Corporate Seal.]

Attest,

Secretary.

State of Pennsylvania, }
 City of Philadelphia, } ss.

being duly sworn, says, That he is the
 Treasurer of ; that said Company has
 a paid up capital of

Sworn and subscribed before me, this }
 day of , A. D. 189 . }

[Notarial Seal.]

XIX. Amendment to Charter.

To the Governor of the Commonwealth of Pennsylvania :

Sir :

In accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "A supplement to an act entitled 'An Act to provide for the Incorporation and Regulation of certain Corporations,' approved April 29, 1874, providing for the improvement, amendment and alteration of the charters of corporations of the second class, and authorizing the incorporation of traction motor companies," approved 13th day of June, A. D. 1883.

The Company hereby certifies : That under and by virtue of Letters-Patent from the Governor of this Commonwealth, dated the day of , A. D. , it was duly incorporated under the Corporation Act of 29 April, 1874, and the supplements thereto¹ for the purpose of

¹ If the corporation was originally incorporated under another statute, and has accepted the provisions of the Act of 1874 and of the Constitution, the fact should be here so stated.

[Endorsed on Certificate.]

EXECUTIVE CHAMBER.

Harrisburg,

189

To the Secretary of the Commonwealth :

Having examined the within application and found it to be in proper form, and that the improvements, amendments and alterations therein asked for are lawful and beneficial, and not injurious to the community, and are in accord with the purposes of the charter,

I hereby approve the same, and direct that Letters-Patent issue in the usual form according to law.

Governor.

XX. Re-Organization by Purchasers at Sale.

To the Secretary of the Commonwealth of Pennsylvania :

WHEREAS, The real, personal and mixed property, corporate franchises and rights of the Company were sold by the _____ at a _____ sale, on the _____ day of _____ A. D. 18 _____ to _____ as by reference to the conveyance of said _____ acknowledged on the _____ day of _____ 18 _____, will more fully and at large appear.

Now, therefore, in accordance with the provisions of the second section of the act entitled "A supplement to an act entitled 'An Act concerning the sale of railroads, canals, turnpikes, bridges and plank roads,' approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-one, extending the provisions of said act to coal, iron, steel, lumber or oil or mining, manufacturing, transportation and telegraph companies in this Commonwealth," approved May 25, A. D. 1878, and the several acts supplementary to and amendatory of this act and the act to which it is a supplement, I do hereby certify, that the persons for and on whose account the said property, corporate franchises and rights were so purchased, did on the _____ day of _____ A. D. 18 _____, meet in _____ County of _____ State of Pennsylvania, due public notice of the time and place of said meeting having been given as required by law, and did proceed to organize a new corporation under the laws of the Commonwealth of Pennsylvania.

That the name adopted by the said Corporation is _____ that the amount of the Capital Stock of said Corporation is fixed at \$ _____ divided into _____ shares of the par value of \$ _____ each. That _____ shares of the par value of \$ _____ each,

making \$ of the Capital Stock, to be deemed and taken as full paid stock, are to be issued to the persons for and on whose behalf said property, franchises and rights were purchased in payment for their respective interests in the same as follows:

NAME.	SHARES.	VALUE.
-------	---------	--------

That the name of the President of said Corporation, elected to serve until , is

That the names of the Directors of said Corporation, elected to serve until , are

NAME.	RESIDENCE.
-------	------------

In testimony whereof, I have hereunto set my hand and caused to be affixed the corporate seal of said Company, this day of A. D. 189 .

Attest,

President.

Secretary.

State of Pennsylvania, } ss.
County of

Be it remembered, That on the day of A. D. 189 , before me in and for said county, personally appeared , President, and Secretary, of the above-named

Corporation who, being duly sworn, depose and say, that they were personally present at the execution of the above written certificate, and saw the common seal of the said Corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said Company, and that the above written instrument or certificate was duly signed, sealed and delivered by and as and for the act and deed of the said Company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the President and as the Secretary of the said Corporation, in attestation of the due execution and delivery of the said certificate, are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above written.
Witness my hand and seal.

XXI. Acceptance of Article XVI of the Constitution.

, a Corporation of the Commonwealth of Pennsylvania, organized under and by virtue of an Act of Assembly of the said Commonwealth entitled "A supplement to an Act entitled, An Act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-one, extending the provisions of said Act to coal, iron, steel, lumber or oil, or mining, manufacturing, transportation and telegraph companies in this Commonwealth," approved May 25, A. D. 1878, and the several Acts supplementary to and amendatory of this Act and the Act to which it is a supplement, hereby certifies under the seal of the Corporation :

That at a called meeting of the directors of the said Corporation, held at its principal office in the _____, Pennsylvania, on the _____ day of _____, A. D. one thousand eight hundred and _____, the following resolutions were adopted :

" *Resolved*, That this Corporation accepts the provisions of Article sixteen of the Constitution of this Commonwealth adopted December 19, 1873.

" *Resolved*, That the president and secretary be and are hereby authorized and directed to make, under the corporate seal, a certificate of the acceptance aforesaid, and to file the same in the office of the Secretary of the Commonwealth."

That in pursuance of said resolutions the said Corporation hereby accepts the provisions of Article sixteen of the Constitution of this Commonwealth.

In testimony whereof the seal of the said Corporation was hereto affixed this _____ day of _____ A. D. 189 .

President.

(Corporate Seal.)

Secretary.

Acceptance of the Constitution and Corporation Act.¹ [*Supra*, p. 48.]

To the Governor of the Commonwealth of Pennsylvania :

Sir :

The

Incorporated on the day of A. D. 18 , under the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled

approved the day of A. D. 18 , and having its location and place of business in Pennsylvania, hereby certifies under the seal of said Corporation :

That the stockholders of said corporation, at a meeting duly called for that purpose, have accepted and hereby do accept the provisions of the Constitution of this Commonwealth and the provisions of an Act entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, and authorized and directed the execution and filing of this certificate for the purpose of having Letters-Patent issued to said Corporation.

And it is hereby certified and declared as follows :

First. That the name of the said corporation is

Second. That said Corporation is formed for the purpose of

Third. That said Corporation is to exist for the term of
years, to be computed from A. D. 18

Fourth. The amount of the capital stock of said Corporation is
\$ divided into shares of the par value of \$
each.

In testimony whereof the said Corporation has hereunto caused its corporate seal to be affixed, attested by its President and Secretary, this day of A. D. 18 .

President.

(Corporate Seal.)

Secretary.

¹ This is the form of acceptance required by section 26 of the Corporation Act as amended by the Act of April 17, 1876. [*Supra*, p. 48.]

(Acknowledgment to be in same form as for Form A, No. 50; *supra*, p. 171.)

(Indorsed on certificate.)

Executive Department, Office of the Governor,
Harrisburg, 189 .

I hereby approve of the within acceptance and direct that Letters-Patent issue according to law.

Governor.

Filed in the office of the Secretary of the Commonwealth this
day of A. D. 18 .

Secretary of the Commonwealth.

Acceptances of the Constitution and of Acts of Assembly.

[By the terms of various Acts of Assembly an acceptance of the Constitution or of an Act of Assembly is made a condition precedent to the enjoyment of the privileges conferred thereby. It is sometimes directed that these acceptances are to be made by the directors and sometimes by the Corporation. In all cases where the directors are not authorized to make the acceptance it must be done by the stockholders at a meeting called for that purpose. The following general form is given for these purposes:]

To the Secretary of the Commonwealth :

, a Corporation of the Commonwealth of Pennsylvania, incorporated on the day of A. D., 18 , under the provisions of an Act of Assembly, entitled “

,” approved the day of , A. D. 18 , hereby certifies under the seal of said Corporation. That at a meeting of the of said Corporation the following resolutions were adopted :

“Resolved, That this Corporation accepts the provisions¹ of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved , A. D. 18 , entitled “

.”
“Resolved, That the President and Secretary be and they are hereby authorized and directed to make under the corporate seal a

¹ Or “the Constitution of the Commonwealth of Pennsylvania.”

certificate of the acceptance aforesaid and to file the same in the Office of the Secretary of the Commonwealth."

That in pursuance of said resolutions the said Corporation
 , hereby accepts the provisions¹ of
 the aforesaid Act of Assembly of said Commonwealth approved
 , A. D. 18 , entitled "

In testimony whereof the said Corporation has caused its corporate
 seal to be affixed, attested by its President and Secretary
 day of , 189 .

President.

(Corporate Seal.)

Secretary.

FORM A—No. 31.

XXII. Statement by Foreign Corporation.

To the Secretary of the Commonwealth of Pennsylvania :

Sir:—In pursuance of the Act of Assembly of Pennsylvania,
 approved April 22, 1874, entitled "An Act to prohibit foreign cor-
 porations from doing business in Pennsylvania without having known
 places of business and authorized agents,"

I , President of
 a Foreign Corporation, do hereby certify,
 That the title of said corporation is

That it is incorporated under the laws of the State of
 with its principal office at
 The object of said corporation is

The office of said corporation in the Commonwealth of Pennsyl-
 vania, has been established at

in county, in said Commonwealth.
 The name of its duly authorized agent to transact its business at
 said office is

In testimony whereof, I have hereunto set my
 hand and caused the seal of said Com-
 pany to be affixed, this day of
 A. D. 18 .
President.

¹Or "of the Constitution of the Commonwealth of Pennsylvania."

GENERAL FORMS FOR BOTH CLASSES.

XXIII. Re-Charter.¹

[The Certificate will follow the general certificate of Corporations of its class for the first seven articles, *supra*, p. 146 or 154, and then proceed:]

VIII. This certificate is a renewal of the former charter of the
 Company, which Company was duly incor-
 porated on the day of A. D. ,
 under and by virtue of an Act of the General Assembly of the
 Commonwealth of Pennsylvania, entitled,
 approved on the day of A. D.

[L. S.]
 [L. S.]
 [L. S.]
 [L. S.]
 [L. S.]

[Acknowledgment, advertisement, proof of publication, decree or Letters-Patent, enrolment and recording as provided for corporations of its class, *supra*, p. 147 et seq. or 155 et seq.]

Certificate Accompanying Re-Charter.²

To the Governor of the Commonwealth of Pennsylvania :

In compliance with the requirements of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved April 29, 1874, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," we , President, and Secretary of Company, do hereby certify

¹This form and accompanying certificate follow the rulings of the Secretary of the Commonwealth, it being held that the statement in reference to the financial condition of the Corporation, and the acceptance of the Constitution and Act of 1874 (*supra*, p. 49), should appear in a separate certificate accompanying the certificate for re-charter and *not* in the latter certificate itself, the reason being that as five subscribers to the certificate for re-charter cannot of themselves accept and surrender rights and privileges pertaining to the corporation, the Act of 1874 must have intended these matters to be inclosed in the accompanying certificate "under the seal of the corporation" (*supra*, p. 49). A purely grammatical construction of the Act might, perhaps, conduce to an opposite conclusion, but the ruling is well established.

² Building associations not incorporated under the Act of 10 April, 1879, must also set forth herein the requirements of that act as provided in the form of certificate, *supra*, p. 164.

that, at a meeting of the stockholders of the said Company, held pursuant to due and legal notice, at its principal office in
on day of , A. D. ,
a majority in interest of such Corporation voted in favor of applying
for the re-charter of said Company.

The present financial condition of said Company is as follows,
viz. :

- a. Capital Stock paid in,
- b. Funded debt,
- c. Floating debt,
- d. Estimated value of property,
- e. Cash assets,

The said Company also, at the same time and place, by a vote of its stockholders, expressly accepted the provisions of the Constitution of this State, and of the Corporation Act of 29 April, 1874, and expressly surrendered all privileges conferred upon it by its original charter that are not enjoyed by Corporations of its class under the said act or the general laws of this Commonwealth.

In testimony whereof the common and corporate seal of the said Corporation has been hereunto affixed this day of
A. D. 189

President.

Attest,

Secretary.

[L. S.]

XXIV. Dissolution of Corporations.

PETITION.

To the Honorable, the Judges of the Court of
County of Term No.
The Petition of

Respectfully represents :

That it is a Corporation for
duly incorporated by under the Act 29 April,
1874, and the supplements thereto. At a meeting of the Stock-
holders of the said Corporation, duly convened, of which due notice
had been given according to the constitution and by-laws, it was re-
solved by a majority of the meeting of the corporators [or unani-

mously resolved by the said Stockholders] to apply to this Honorable Court for a decree of dissolution of the said corporation petitioner.

Wherefore the petitioner, showing to the Court that the prayer of its petition may be granted without prejudice to the public welfare or the interests of the corporators, prays the Court for permission to surrender any power contained in its charter, and that the Court will make a decree for the dissolution of the said Corporation. The petitioner further avers that notice of this application has been given by publication in

being two newspapers published in the county
of and also in published in the said
county, in accordance with the Act of Assembly in such case made
and provided, being the county in which the principal operations of
the Corporation are conducted [*or in which its principal office is
located*],¹ and that all taxes due or alleged to be due to the Common-
wealth of Pennsylvania have been fully paid into the State Trea-
sury as appears by the certificates of the Auditor General, State
Treasurer, and Attorney General filed herewith.

[Corporate Seal.]

Attest,

Affidavit.

State of Pennsylvania, }
County of }

being duly sworn, says that he is the Secretary
of the petitioner, and that the statements made in
the foregoing Petition are just and true ; that the seal of the Corpora-
tion affixed to the said petition is the common and corporate seal of
the said Corporation, and that the petition aforesaid was signed by
and with the consent of a majority of a meeting of the corporators duly
convened, and that notice of this application has been given by
publication as required by law in the and
newspapers of general circulation published in said county, and also
in as required by the Act of Assembly in such case
made and provided. A copy of the said notice is hereto annexed.

Sworn and subscribed before
me this day of

¹ *Supra*, p. 139.

Decree.

And now this day of A. D. 189 , the
petition of for a decree for the disso-
lution of the said Corporation and the approval of the accounts of
the Directors thereof having been duly presented, and proof having
been made that notice of such application has been duly given by
publication according to law, and it appearing by the proper certifi-
cates of the Auditor General, State Treasurer, and Attorney Gen-
eral filed that all taxes due the Commonwealth of Pennsylvania
have been paid, and it further appearing that the prayer of the said
petition may be granted without prejudice to the public welfare or
the interests of the corporators, it is on motion of
Esq., for petitioner ordered and decreed that the accounts of the
Directors of the said Corporation filed with the petition aforesaid be
and the same are approved and confirmed, and that the said Corpo-
ration be and the same is hereby dissolved, and all and singular its
powers, franchises and privileges be and the same are hereby extin-
guished and determined. *Provided*, That this decree shall not go
into effect until a certified copy thereof be filed and recorded in the
office of the Secretary of the Commonwealth.

Per curiam.

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